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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

LA 0104022 et al
0102523
0102524
0105450
0105451
5 04g:MTS

May 23, 1955

DECISION

Registered Mail
Return Receipt Requested

State of California
Edwin W. Winger, et al

State Indemnity Selections
Small Tract Applications

Small Tract Applications Rejected
State Indemnity Selections Allowed

The applicants listed in Appendix "A" attached hereto have filed appeals with this office to the Manager's decision of November 25, 1954, which rejected their applications for small tract lease. There are 181 applications affected by the Manager's decision of November 25 involving SIS L.A. 0102523 and 0105451. Mr. R. K. James filed a joint appeal in behalf of the small tract applicants in his purported capacity as spokesman. Of the applicants involved 56 have also filed individual appeals with this office. Rejection of these small tract applications was based on priority of filing and partial satisfaction of the statutory right of the State to make such selections; along with the fact that disposal would not have an adverse affect on any Federal interest in the area.

The State of California has also filed State Selections, Los Angeles 0102524 and 0105450, which are in the immediate vicinity of the two other selections, Los Angeles 0102523 and 0105451. Since the same issues are involved in all the cases and 65 small tract applications listed in Appendix "B" (copy attached) conflict with State Selections, Los Angeles 0102524 and 0105450, it is considered that an initial decision by the Director in 0102524 and 0105450 along with a decision on the pending appeals in the other two State Selections would expedite the consistent disposition of all these related cases.

The State Selection Applications involve the following lands:

Los Angeles 0102523 - T. 11 N., R. 15 W., S.B.M.
sec. 22, N½
sec. 24, SE¼

0102524 - T. 11 N., R. 15 W., S.B.M.
sec. 26, S½
sec. 34, N½

0105450 - T. 11 N., R. 12 W., S.B.M.
sec. 16, NW¼
T. 11 N., R. 13 W., S.B.M.
sec. 23, SW¼

R. D

Los Angeles 0102623 - T. 11 N., R. 13 W., S.B.M.
sec. 14, E½, N½NW¼, SE¼NW¼, SE¼.

The 88 small tract applicants in their individual appeals allege that the lands involved in State Indemnity Selections 0102623 and 0103451 are more suitable for small tract use; that prior findings favorable to a classification for small tracts should repel or neutralize any right of the State of California to acquire the land in issue and that disposal of the lands other than to the small tract applicants would adversely effect the Federal interest. The appeal filed by Mr. R. K. James, in effect, carries the same allegations as those made by the individual applicants. Although there is no evidence in the record which would indicate that Mr. James has authority to represent the small tract applicants before the Bureau in accordance with the Rules of Practice, this decision has taken into consideration all of the allegations of the joint and individual appeals.

Examination of the records indicate that the State filed its applications during 1958, and from one to three months prior to any filing for small tracts.

In determining whether a State Indemnity Selection or a number of conflicting small tract applications should be given preference, the Department has no reason to question the use to which the State may put the selected land if its application is allowed. The Department has also held that merely because land can be properly classified as suitable for small tract application is not sufficient reason for refusing to classify that land as proper for State Selection. See Isabel Gunnerson, et al, A-26952, dated February 11, 1956.

The general policy of the Department of the Interior is to give a high priority to the satisfaction of State Selection rights unless they conflict with applications previously filed, with Small Tract and Recreation Act classifications or with an active Federal management program, or they involve lands necessary to the effective administration of other Federal lands.

Since there appears to be no compelling reason which requires the lands in issue to be disposed of to private persons under the Small Tract Act rather than to the State of California in partial satisfaction of the School grants made to it by the Congress and disposal by State Selection is in accord with established policy, all of the small tract applications are rejected and the State Selection applications are allowed, if all else is regular.

This decision is subject to appeal to the Secretary of the Interior within 30 days of receipt of same. Any appeal, if filed, must

conform to the provisions of 43 CFR sections 221.75 and 221.76. Copy of Circular 1818 is attached. Any appeal, if filed, must also be served on the State.

For the Director:

A. H. Zane

Attachment

Copy to: State of California (Registered Mail)
Each applicant (s.t.) " "
AO-1
SO(Calif.)
LO(Sacramento)
ASC
BLM Reading File
Attorneys Reading File
Appeals Unit (5)
Lands Staff Officer (2)
Each case file
MTS
Congressman Hagen

APPENDIX "A"

	Los Angeles		Los Angeles
Edwin W. Winger	0104022	Edward W. Madison	0105620
Harry M. Richardson	0104794	Clyde D. Coplin	0105621
Stanley W. Richardson	0104795	Lucky Johnson	0105622
Frank S. Galle	0104796	Clyde E. Harral	0105623
Umberto Sarno	0104828	Richard W. Green	0105624
Dino A. Sarno	0104829	John C. Shouse	0105625
Paula T. Pasquero	0104964	Fallis T. Arthur	0105697
Ernest E. Tedford	0104965	Pearl Arthur	0105698
William A. Stephens	0104966	Richard E. Erwin	0105729
Anna B. Stephens	0104967	Ellis E. Bradley	0105730
John F. Cerveny, Jr.	0104968	Jay C. Failing	0105731
Edward P. Leone	0105159	George E. Ivey	0105732
George E. Stonebarger, Sr.	0105205	Aaron C. Steitz	0105733
Judy L. Stonebarger	0105206	William A. Ellison	0105734
Phylander E. Gleason	0105207	Con Moyer	0105735
		Ethel Kirby	0105736
Julian C. Mathews	0105433	Frank J. Profeta	0105737
Gladis M. Buckley	0105434	Gail Maud Walsh	0105798
Eva E. Carnagey	0105435	Thomas C. Slack	0105804
Herman L. Carnagey	0105436	John A. Dubay	0105846
James E. Perkins	0105438	Oscar F. Maurer	0105969
Olan D. Walter	0105439	Lee A. Steitz	0106173
Jerome A. Goodall	0105609	Luther E. Graves	0106205
George W. Rooksian	0105610	Herbert J. Barker	0106439
Robert D. Leonard	0105611	Shirley G. Jackson	0106512
Charles M. Gloro	0105612	Laura M. Harmon	0106513
Russell J. McDowell	0105613	Elizabeth Harmon	0106514
Fred Woodward	0105614	Ralph T. Arthur	0106556
James F. Hough	0105615	Mortimer J. McInerney	0106596
Stanley Rader	0105616	Delia McInerney	0106597
Howard V. Clark	0105617	Victor L. Smyth	0106825
James M. Bishop	0105618	Edwin A. Koch	0107315
Henry D. Leonard	0105619		
Ester Green	0104559	Arthur L. Watkins	0104918
Edward J. Kichline	0104686	Ivy L. Lowe	0104919
Robert A. Loring	0104687	Edith M. Brae	0104920
Frank Totake	0104784	Edward S. Irvin	0104921
Clarence J. Livak	0104785	Charles F. Wilson	0104922
Robert A. Byers	0104787	Benjamin G. Rich	0104923
Oscar H. Holshausen	0104788	Samuel A. Moore	0104925
Francis M. Page	0104789	William Henderson Moore	0104926
James L. Lambert	0104797	Thelda Batton	0104927
James Leo Lambert	0104798	Theron E. Griffin	0104928
Dixie L. Ragosta	0104799	Kathryn L. Hodgson	0104929
Velma E. Westberg	0104800	William T. Deck	0104950
Ann B. Gilbert	0104916	Creone M. Houck	0104931
George E. Kremser	0104917	Constance M. Tillingham	0104962

	Los Angeles
Walter O. Paige	0104965
Eileen Bloomer	0104969
Albert O. Tyson	0104970
Barbara L. Cappello	0104971
Louis Winger	0104972
William E. Butler	0104973
Myron E. Butler	0104974
Robert L. Ralston	0104975
Bob R. Leverett	0104978
Jerome T. Mier	0104977
Lloyd W. Alsbury	0104978
Harold J. Chambers	0104979
Walter A. Terrill	0104980
Jack T. Gardner	0104981
Robert J. Gilson	0104982
Charles E. J. Foote	0104983
Albert B. Smith	0104984
Claude Charles Griggs	0104985
William L. Laycock	0104986
Blanche S. Deaver	0104987
Sulah F. Gibbs	0104988
Percy W. Hamilton	0104989
Donald L. Thompson	0104990
James M. Stussy	0104991
Helen K. White	0104992
John Q. Adams, Jr.	0104993
Edwin L. Schoon	0104994
John Q. Adams, Sr.	0104995
William L. Butigan	0104996
Charles J. Wygant	0104997
Robert B. Warner	0104998
John B. Currado	0105000
Robert L. Adams	0105001
John H. Birt	0105023
Evelyn D. Puckett	0105024
Henry H. Bartholomew	0105025
Vivian L. Chase	0105040
Wanda J. Callen	0105042
Pearl A. Myer	0105041
Rita I. Valdivia	0105043
Robert D. Sims	0105044
Joseph D. Kinnear	0105045
Charles T. Smith	0105046
William H. Packer	0105047

	Los Angeles
Ludovico Actis	0105049
Ernest E. Brokaw Jr.	0105050
Glendon P. Johnson	0105052
Joe F. Billingsley	0105053
Earl R. Pugh	0105054
Jack D. Malicott	0105055
Percy B. Malicott	0105056
Don Johnson	0105057
George W. Hodges	0105058
Floyd V. Ryan	0105059
Luther E. Cole	0105060
Nannie P. Mobley	0105061
Lester H. Booth	0105062
Raymond E. Darrah	0105063
John Hamalak	0105064
Bertha F. Ball	0105065
Beatrice J. DeArmond	0105066
Samuel B. Irvin	0105068
George Phillips	0105103
Emanuel Manouso	0105123
William E. Bobar	0105124
John C. Dean	0105125
Yancy T. Womack	0105126
Charles W. Womack	0105127
Michael C. Doran	0105128
John D. Davis, Jr.	0105129
Anna Currado	0105130
Frank C. Roberts, Jr.	0105157
Ester Beadle	0105158
Hattie E. Heckman	0105161
Grace L. Pudge	0105163
Chris Pulos	0105164
Herbert L. Henson	0105165
Florin C. Haberer	0105166
Frank A. Curtis	0105167
Albert S. Linck	0105168
Laurette M. Saddler	0105204
Joe B. Leverett	0105228
Grover C. Heard	0105229
Gill L. Linsley	0105230
Jess A. Thomas	0105231
Charles A. Porter	0105259
Cecil M. Turley	0119403
Ardith E. Gilman	0120217

APPENDIX "B"

	Los Angeles
Mary Elizabeth Thew	0104 [illegible]
Elvin Comer Turner	0104511
Lillian Renaud	0104512
Edith J. Vreeland	0104513
Clifton E. Shinn	0104514
Minier B. Nielsen	0104515
Glenn L. Moore	0104516
Mary R. Jackson	0104517
Charmion Slaughter	0104518
Edward H. Heise	0104519
Charles Manuel Joseph	0104520
Willis Daniel Gray	0104521
Edythe L. Fearer	0104538
Paul R. Jones	0104555
Shirley Etta Esau	0104557
Nina Vera Ingle	0104561
Alice I. Eliz. Goodwin	0105606
Frederick H. Goodwin	0105606
Clyde Edw. Bell	0105807
Howard Gerald Bell	0105808
Ralph Raymond Flack	0105799
Ruth Lorraine Boyd	0105967
William Henry Flack	0105968
Nadine Jones (Mr.)	0113555
Lorna Irene Ferganchick	0113933
Robt. J. Venerable	0114619
Harvey Couch Moore	0114262
John Jacob Rector	0114558
Roderick Robb Black	0115098
John Black	0115099
Henry M. Joseph	0115101
Jacob Joseph	0115102
Richard Terry Heasley	0115563
Kleo Valerie Moss	0115485
Daisy G. Ward	0115487
Carl O. Jelm	0115519
Dennis Lilley	0116584
Eugene D. Lilley	0116585
Mrs. Arline D. Baril	0116588
James B. Benson	0116937
Cecil M. Turley	0119405

	Los Angeles
Ruth Pearson Richmond	0104580
Howard Russell Stimmel	0104582
Vernon Jay Laycock	0104601
Charles Frank Parker	0104602
Mildred Mae Cerdo	0104624
Lewis Spencer Smith	0104780
George Robert Cherry	0104781
Lee Guss Potts	0104782
Esther Agnes Cerveny	0104785
Robert Peter Ulrich	0104790
Sarah Hattie Byers	0104795
Arthur William Baker	0104820
James R. Esau	0104866
Otis Keith Parker	0104935
Helen Margaret Allred	0105278
Peter Kenneth Selden	0105279
Carl Henry Dalaba	0105437
Vandalee Delmar Rowell	0105801
Guy Delmar Rowell	0105802
Mary Haywood Mahrer	0106805
Harry Lee Styrom	0105800
Mrs. Naomi C. Chacon	0106145
Albert Wesley Nix	0106438
Marguerite MacLean Glenar	0108116
Einar C. Estlund	0108640
Grant W. Finwall	0111927
Ardith E. Gilman	0120217
Roy C. Zornes	0124610

DEPT. OF THE INTERIOR
MAY 27 1955

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0126828
5.04g

Registered Mail
Return Receipt Requested

January 12, 1956

DECISION

Lary A. Purdin
State of California

Indemnity Selection

Decision of Manager Affirmed

This is an appeal from the Manager's decision of February 11, 1955, rejecting an application for selection of 20 acres because the land applied for "was restored from National Forest withdrawal by List 5-2829 to Homestead Entry only."

The land involved in the State indemnity selection was, presumably, selected by the State on behalf of Lary F. Purdin, who desires the land as a campsite for health and recreational purposes.

On March 14, 1955, the present appeal was filed with the Director. The State appended a notation on the bottom of the appeal approving the appeal.

Mr. Purdin contends that after many years of intense homestead demands, this land has been passed over, since it is both unsuitable and undesirable for homestead use in which residence and cultivation are required because the soil is sandy and a thorn-like brush growth covers the land. There is no water and since the acreage is at the top of a hill, the cost of drilling would be prohibitive. No additional evidence is presented as to the character of the surrounding land which, in view of the classification conceivably could include lands suitable for an entire homestead entry.

The land applied for was relinquished in December 1919 from the former homestead entry of Clarence Juday, 030489, who patented the S½SE¼SW¼ of Section 15, T. 7 N., R. 15 W., S.B. on January 26, 1921, which appears to indicate that the surrounding land is suitable for homesteading.

Mr. Purdin has also pending a homestead application for this land under 0117486 filed June 10, 1955.

The land involved is within a National Forest and under the Act of June 11, 1906 (34 Stat. 233) was restored April 21, 1917 to homestead entry only.

The appeal concurred in by the State of California is apparently based on the supposition that the land may be classified under Section 7 of the Taylor Grazing Act, as amended (43 U.S.C., 1952 ed., sec. 315f), and thus open it to selection under Section 2275 of the Revised Statutes, as amended February 28, 1891. (26 Stat. 796; 43 U.S.C., sec. 851).

Since the land is still within the National Forest it is under the jurisdiction of the Department of Agriculture and hence not subject to classification under Section 7 of the Taylor Grazing Act.

Accordingly, the decision of the Manager is affirmed. This decision is without prejudice to appellant perfecting his homestead application mentioned supra. The right of appeal is allowed to the Secretary of the Interior within 30 days from receipt of this decision. Appeals must be filed in accordance with the provisions of 43 CFR 221.75 and 221.76 Circular No. 1818 is attached.

For the Director

A. H. Furr

Attachment: Circular 1818

State Lands Commission, State of Calif. (Registered Mail)
Lary A. Purdin (Registered Mail)
Each AO
Each SO (3)
Each LO (3)
Lands Staff Officer (2)
Case File
FSRD
BLM Reading File
Attorneys' Reading File
AU (25)
CWM
U. S. Forest Service

In reply refer to:

Sacramento 048991
5.04g

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 26, 1956

Registered Mail
Return Receipt Requested

DECISION

State of California : State Indemnity Selection

Manager's Decision Affirmed

By decision of December 15, 1955, the Manager, Land Office, Sacramento, California, rejected State Indemnity Selection application Sacramento 048991, embracing Lot 10, sec. 13, T. 9 N., R. 3 E., M.M., because the tract is an integral part of a larger block of Government land; that it is necessary as an access to a part of this block; that to dispose of this tract would break the block into two separate isolated tracts and would diminish the value and make more difficult the disposal of the other public lands in the area.

On January 6, 1956, the State of California filed an appeal from the Manager's decision to the Director. It appears from the appeal that the appellant is under the mistaken belief that the Secretary is bound to approve an application for a State Lieu Selection if the selected lands are surveyed and found to be non-mineral in character.

All of the vacant, unreserved and unappropriated public land in California was withdrawn from settlement, location, sale, or entry, and reserved for classification by Executive Order No. 6910, dated November 26, 1934 (43 CFR 297.11). Section 7 of the Taylor Grazing Act, as amended, authorizes the Secretary of the Interior, in his discretion, to examine and classify such withdrawn land and when he finds the land is proper for acquisition in satisfaction of lieu rights, to open such land to selection. Until the land has been classified and opened to entry, it is not subject to disposition.

Consequently, the land selected by the State must be classified as subject to disposition as an indemnity selection before the State's application may be allowed. Land will not be so classified where a Federal interest dictates the retention of the land in Federal ownership. State of California, Jack Clark Gutte, A-26616 (February 17, 1954). The land involved in the appeal is timbered and is a part of an area of public domain timberland which is included in a management unit. It is also considered advisable by this Bureau to retain the land in public ownership in order to conduct a sale of fire-killed timber on the tract involved.

In view of the foregoing, the decision of the Manager is hereby affirmed. This decision is subject to the right of appeal to the Secretary of the Interior within 30 days from receipt thereof in accordance with the regulations as contained in the attached Circular No. 1818.

For the Director:

A. H. Jones

Attachment: Circ. 1818

Distribution:

Appellant (Registered Mail)
Mr. N. O. Nicholson (Regular Mail)
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PAS
Area Counsel (Anchorage) 2
Lands and Minerals Officer (Anchorage) 2
District Manager (Juneau) 2

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

(Circular No. 1818)

PART 221—RULES OF PRACTICE

SUBPART B—PROCEEDINGS BEFORE THE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT AND SECRETARY OF THE INTERIOR

MISCELLANEOUS AMENDMENTS

1. Section 221.75 is amended to read as follows:

§ 221.75 *Notice of appeal to Secretary.* (a) An aggrieved person desiring to appeal to the Secretary of the Interior from a decision rendered by the Director of the Bureau of Land Management must, within 30 days from the date of the service upon such person or his authorized representative of notice of the Director's decision, file a notice of appeal with the Director, Bureau of Land Management, Department of the Interior, Washington 25, D. C.

(b) A notice of appeal shall set forth clearly and concisely the grounds upon which the appellant contends that the Director's decision is erroneous.

(c) If the Director's decision indicates that any other person has an interest in the proceeding adverse to the appellant, the appellant shall, within the 30-day period prescribed in paragraph (a) of this section (or such further period as may be allowed by the Secretary or his representative for good cause shown), file a certificate showing that a copy of the notice of appeal has been served personally upon or mailed to each such person or his authorized representative. If the certificate accompanies the notice of appeal, it shall be filed with the Director of the Bureau of Land Management. Otherwise, it shall be filed with the Solicitor, Department of the Interior, Washington 25, D. C.

(d) An appeal shall be subject to summary dismissal for failure to comply with any of the requirements prescribed in this section.

2. Section 221.76 is amended to read as follows:

§ 221.76 *Filing of briefs.* (a) Within 20 days after filing a notice of appeal (or within such further period as may be allowed by the Secretary or his representative for good cause shown), the appellant may file with the Solicitor, Department of the Interior, Washington 25, D. C., a brief in support of his appeal. If any other person has an interest in the proceeding adverse to the appellant, the brief shall be accompanied by a certificate showing that a copy of the brief has been served personally upon or mailed to each such person or his authorized representative.

(b) Within 20 days after personal service upon or 25 days after the date of the mailing of the appellant's brief to an adverse party (or within such further period as may be allowed by the Secretary or his representative for good cause shown), the adverse party may file a reply brief with the Solicitor, Department of the Interior, Washington 25, D. C. The reply brief shall be accompanied by a certificate showing that a copy of the reply brief has been served personally upon or mailed to the appellant or his authorized representative.

3. Sections 221.77, 221.78, and 221.79 are revoked.

4. The foregoing amendments to the regulations shall be effective with respect to all decisions rendered by the Director of the Bureau of Land Management on and after the 30th day following the publication of the amendments in the FEDERAL REGISTER.

(R. S. 2478; 43 U. S. C. 1201)

OSCAR L. CHAPMAN,
Secretary of the Interior.

MAY 16, 1952.

[F. R. Doc. 52-5694; Filed, May 22, 1952; 8:48 a. m.]

Published in 17 F.R. 4708 of May 23, 1952

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Washington Division & Branch Chiefs
Miss Rosenberg, Room 5648 - 40
Mrs. Mann, Geological Survey, Room 3228, GSA Bldg. - 10

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In reply refer to:
Los Angeles 0123589
5.043

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 22, 1956

Registered Mail
Return Receipt Requested

DECISION

State of California : Indemnity Selection

Manager's Decision Reversed

The State of California, Division of State Lands, has appealed to the Director of the Bureau of Land Management from a decision by the Manager of the Land Office at Los Angeles, California dated February 21, 1955, rejecting in part the State's indemnity selection application (Los Angeles 0123589) on the ground that each of the rejected tracts comprised less than the "least legal subdivision and therefore failed to meet the requirements for allowance of the application". The rejected tracts consisted of the W½SE¼SW¼, NE¼SE¼SW¼ Section 8, and E½NE¼NW¼NW¼, S½NW¼NW¼ Section 20, T. 6 N., R. 4 W., S.B.M., California.

Subsequently, the State requested the withdrawal of the above-described tracts in Section 20 from its selection application, and also the withdrawal of another tract which is not involved in the appeal.

In a modification of appeal filed April 20, 1955, the State accepted the rejection of its selection application insofar as it applies to the E½NE¼NW¼NW¼ and S½NW¼NW¼ of Section 20, alleging that all of the NW¼NW¼ of Section 20 is covered by a placer mining claim. The State asserted, however, that it does not accept the rejection as to the W½SE¼SW¼ and NE¼SE¼SW¼ of Section 8. It contends that although the general rule is that a State selection must include the smallest regular legal subdivision of 40 acres or fractional lot, United States v. Central Pacific Railway Company, 49 L. D. 250, the State may exclude mining locations from its selection in accordance with the case State of Arizona, 53 L. D. 149.

The pertinent regulation (43 CFR 270.3) provides in part as follows:

> "* * * All lists of indemnity school lands must be prepared so that each selected tract will correspond in area with the base tract, and separate base or bases must be assigned to each smallest legal subdivision of land selected."

The Department in the case of Rubert Ray Spenser, 60 L.D.198, decided June 7, 1948 held with respect to the problem of whether or not lands less than 40 acres could be classified for disposal, that, "Under the long-established rule of the Department, the Quarter-Quarter section, or the fractional lot, is ordinarily the minimum unit of land for classification and disposal. Deviation from the rule is permitted only where no public interest is prejudiced and where it facilitates the administration of the public lands."

There is no indication in the record that the disposal of the tracts involved in the appeal would prejudice the administration of the public land in the area and in view of the information in the record that the remainder of the section in dispute is covered by an unpatented mining claim, it is felt that a further investigation should be made in order to determine whether or not it is in the best interests of the United States to dispose of such tracts. Accordingly, the Manager's decision is reversed and the record is being returned to the land office to determine whether or not it is prejudicial to the administration of the public lands in that area to dispose of the tracts in question.

Acting Director

Distribution:

State of California, Division of State Lands (Regular mail)
Messrs. Musick, Peeler & Garrett, Attys. for State applicant (Regular mail)
Each AO (3)
Each SO (3)
Each LO (3)
Lands Staff Officer (2)
Alaska OS
Area Counsel (Anchorage) 2
L & M Officer (Anchorage) 2
SO, Sacramento, with case record L.A.0123589
FSRD
BLM Reading file
Attorneys' Reading file
AU (25)
GRH

In reply refer to:
Sacramento
048304 SIS
048305 SIS
046188 PSA
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Registered Mail
Return Receipt Requested

DECISION

March 25, 1957.

State of California Scott Lumber Company	:	State Indemnity Selection
John E. Gentry	:	Public Sale Application

Sacramento 048304 State Selection Rejected - Public Sale Ordered
Sacramento 048305 Manager's Decision Affirmed
Sacramento 046188 Manager's Decision Reversed - Public Sale Ordered

Scott Lumber Company has appealed to the Director, Bureau of Land Management, from a decision by the Manager of the Land Office, Sacramento, California, dated May 2, 1955, which dismissed their protest against State indemnity selection application Sacramento 048305. Previously, John E. Gentry had appealed to the Director from a decision of August 3, 1953, by the Manager dismissing his public sale application Sacramento 046188.

The above-captioned cases are so interwoven and involve portions of the same lands that they will be considered in this decision. However, to avoid confusion, they will be considered separately.

048304

The State of California filed an application for Indemnity Selection, Sacramento 048304, covering Sec. 12, T. 35 N., R. 1 E., M.D.M., on April 26, 1954. This application is in conflict with the Public Sale Application filed by John E. Gentry on July 2, 1952, for the same land. As will be shown later in this decision, the Public Sale is to be ordered. Therefore, the State Indemnity Selection, Sacramento 048304 is hereby rejected, because the public sale application was prior in point of filing. State of California, et al., Sacramento 047064, etc. (September 8, 1955).

State Indemnity Selection, Sacramento 048305, was filed by the State of California on April 26, 1954. As amended by partial withdrawal filed on February 18, 1955, the application covers the following lands:

	Acres
T. 35 N., R. 1 W., M.D.M.	
sec. 2, Lot 10;	40
T. 35 N., R. 1 E., M.D.M.	
sec. 10, $NE\frac{1}{4}NW\frac{1}{4}$, $NW\frac{1}{4}NE\frac{1}{4}$;	80
sec. 14, Lots 1 & 2, $SW\frac{1}{4}SW\frac{1}{4}$;	118.08
T. 35 N., R. 2 E., M.D.M.	
sec. 17, $SW\frac{1}{4}SW\frac{1}{4}$;	40
sec. 18, Lots 9, 10, 11, 16;	176.08
T. 35 N., R. 4 E., M.D.M.	
sec. 7, Lot 2, $NE\frac{1}{4}NW\frac{1}{4}$, $W\frac{1}{2}NE\frac{1}{4}$;	157.94.

Pursuant to field examination of the area, it was found that the $NE\frac{1}{4}NW\frac{1}{4}$, $NW\frac{1}{4}NE\frac{1}{4}$ sec. 10, T. 35 N., R. 1 E., should be classified as suitable for disposal by private exchange. The State of California eliminated these two tracts from their application by the partial withdrawal of February 18, 1955. On March 8, 1955, the Land Office Manager announced the classification of the land covered by the amended application as suitable for disposal by State Indemnity Selection and allowed the State of California's application, and at the same time ordered publication of notice in the Redding Record Searchlight. The notice was published in the above-mentioned paper on March 25, April 1, 8, 15, 22, 1955.

Scott Lumber Company filed a letter of protest on April 18, 1955, in which they stated that they own adjoining lands and feel that the public domain should be put up for public sale. In his decision of May 2, 1955, the Land Office Manager dismissed Scott Lumber Company's protest on the grounds that where a State seeks to obtain a tract of public land as an indemnity school land selection and a private person seeks to have the same tract ordered into market under the Public Sale Law, preference will be given to the State Selection. It is from this decision that Scott Lumber Company has filed timely appeal to the Director.

In their appeal, the company narrows their protest to the lands in sec. 14, T. 35 N., R. 1 E., and secs. 17 and 18, T. 35 N., R. 2 E., M.D.M. The company contends that:

"These lands adjoin timberlands owned by this company and the section 14 parcels are completely isolated with only private logging roads adjacent thereto and the Section 17 and 18 parcel has a private logging road running through it.

"Therefore, as was our original contention, since these people do not have any rights-of-way to gain access to this property, we feel that the adjacent land owners should have an opportunity to bid on these lands in the public interest since they have, for many years, afforded fire and trespass protection to these lands."

The mere fact that a company desires that a tract of land be put up for sale is not sufficient for that reason alone to reject a State Indemnity Selection where the State's filing is the only application for that land. The section 14 parcels are in fact isolated, but in disposing of public lands, the Government is under no obligation to consider the land pattern of privately owned lands. State of Utah, Utah 04015, etc. (July 17, 1956). The records show that the road running through the sections 17 and 18 parcels is actually a Forest Service Lookout road and is a public road. The disposal of these lands will not disrupt any local economy and allows the Government to discharge part of its obligation to the State. Therefore, under the circumstances of the case and since the Scott Lumber Company has submitted no evidence to show the classification to be in error, the Manager's decision is affirmed and the protest dismissed.

046188

Mr. John E. Gentry filed a public sale application on July 2, 1952, covering sec. 12, T. 35 N., R. 1 E., M.D.M. After field examination, the Land Office Manager rejected the application by decision of August 3, 1953, on the grounds that "The records of this office show that the land applied for, together with additional lands in that area, contains merchantable timber and can easily be managed with the larger area to form a single unit for sustained timber production." Mr. Gentry has filed timely appeal from this decision.

In considering the various cases embraced in this decision, it was noted that there seemed to be some discrepancy in classification in this area in that the field had recommended disposal of a portion of the land and retention of the remaining lands. These lands were the only remaining public lands in that area and the volume of timber per acre was not appreciably different between the various tracts. A careful review of all the information assembled in the record, including a supplemental field report of November 27, 1956, leads to the conclusion that there is not adequate ground for retention of sec. 12, T. 35 N., R. 1 E., in public ownership, and that the public interest can best be served by disposal of this land at public sale pursuant to Mr. Gentry's application.

In view of the foregoing, the Manager's decision of August 3, 1953, is hereby reversed. When this decision becomes final, the case will be remanded to the Manager, through the Bureau's State Supervisor at Sacramento, California, for further processing toward the ordering of the land into public sale pursuant to application Sacramento 046188, if all else is regular.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee (in each case). Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

In the event of an appeal by Scott Lumber Company, the adverse party to be served with notice thereof is State Lands Commission, Division of State Lands, 1403 Twelfth Street, Sacramento 14, California. If an appeal is filed by the State, the adverse party to be served is Mr. John E. Gentry, 500 Eucalyptus Drive, El Segundo, California.

Acting Director

Attachment

DISTRIBUTION:

State of California, Division of State Lands (Registered Mail)
Scott Lumber Company (Registered Mail)
Mr. John E. Gentry (Regular Mail)
Hon. Cecil R. King, Member of Congress
Lands Staff Officer
Appeals List No. 1
JML
Forestry Staff Officer

BUREAU OF LAND MANAGEMENT
APR 5 1 55 PM 1957
DEPT. OF INTERIOR SACRAMENTO, CAL.

appeal to Sec
affirmed A-27752 1-7-59
Reconsideration denied Supp A-27752 2-29-60

In reply refer to:
Sacramento 048376, etc. 1/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 15, 1958

Certified Mail
Return Receipt Requested

DECISION

State of California, et al. 1/ : State Indemnity Selections

Decisions of the Manager Affirmed as to State Indemnity Selection Applications Sacramento 048376, 048377, and 048306: Sacramento 048307 Affirmed, as Modified: Sacramento 048308 Affirmed, as Modified, Remanded in Part.

The State of California has appealed to the Director, Bureau of Land Management, from decisions of the Manager of the Land Office, Sacramento, California, dated September 19, 1955, which rejected five State indemnity selection applications filed by the State of California.

The State's applications were filed pursuant to the provisions of the Act of February 28, 1891 (26 Stat. 796; 43 U.S.C. 851) and Section 7 of the Act of June 28, 1934 (48 Stat. 1272), as amended (43 U.S.C., 1952 ed., 315f). They were rejected because the lands contained valuable timber resources upon which this Bureau had expended $8,000 or more for cruising and surveying in order to incorporate the lands into a management unit and to market the merchantable timber.

Appellant alleges in pertinent part that (1) less than five percent of the lands in the townships involved are vacant public lands and that the lands consist of isolated tracts for which there is no management program by the Bureau of Land Management; (2) it is the expressed policy of the Department to dispose of scattered, isolated, tracts not required for public purposes; and (3) there is no law or regulation which gives a timber sale application priority over a State indemnity selection.

1/ The lands contained in the five State indemnity selection applications as well as the conflicting applications for the same lands are listed by land office serial number, and by legal subdivisions involved, on Appendix 1.

In a supplement to the appeal dated January 13, 1956, the Manager of the Land Office was advised that the State is willing to amend the selection applications to include all lands not under an existing application to the extent that the State can exercise its indemnity rights. This, the appellant alleges would prevent piecemeal selections and permit the federal government to dispose of all of the vacant public lands in the area.

The record indicates that the lands are located in Humboldt County, California. They consist of a total of 17 isolated tracts ranging from 40 to 1,280 acres in size, and comprise a total of approximately 3,560 acres. A timber management program involving the lands sought has been under consideration since 1949. However, due to the necessity for a timber cruise to determine the value of the timber, and cadastral surveys required to locate the boundaries of the lands involved, no action could be taken on the timber sale applications until June, 1954, which was after certain of the State selection and public sale applications had been filed. Field reports indicate that the lands in T. 1 N., R. 4 E., and T. 1 S., Rs. 3 and 4 E., covering approximately 3,440 acres, support a stand of about 130 million board feet of commercial timber. The reports indicate that at that time the timber would support an annual sustained yield cut of about two million board feet which if marketed at a unit price of $15 per MBF would afford an annual return to the government of $30,000. In addition, this Bureau has invested approximately $8,000 in timber cruises and for cadastral surveys to locate the boundaries of the lands. It was on the basis of the foregoing record that the State indemnity selection applications were rejected.

There are a total of 29 applications involving the subject lands. These consist of five State indemnity selection applications, nine Indian allotment applications, five public sale applications, and nine timber sale applications. These applications are in conflict as to all or some part of the lands except for three of the forty-acre subdivisions.

The lands offered by the State of California are located within the exterior limits of an area in which the public lands were withdrawn when the Death Valley National Monument was established on February 11, 1933. 2/ All of the lands in these areas were surveyed in

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2/ The public lands in T. 22 N., R. 3 E., S.B.M.; T. 28 N., R. 1 E.; T. 28 N., R. 3 E., T. 27 N., R. 2 E., and T. 29 N., R. 1 E., were withdrawn by proclamation of the President of February 11, 1933. The lands in T. 18 N., R. 5 E., were withdrawn by proclamation of March 26, 1937.

1856 and 1857 except for eighty acres. 3/ The State of California was admitted to the Union on September 9, 1850. Because the lands were included in the Death Valley National Monument the State is attempting to use the lands as base. It has had since 1937 to exercise its rights to work out a land adjustment, that would be mutually beneficial to the interests of both the State of California and the federal government, through a State Exchange with the federal government pursuant to Section 8 of the Act of June 28, 1934 (48 Stat. 1272) as amended (43 U.S.C. 315f), and regulations thereunder (43 CFR, 1954 ed., sec. 147, et seq.) The pertinent departmental policy with respect to State exchanges is as follows:

> "An application for exchange may be made on the basis of equal area or equal value. However, with respect to all exchange applications filed after June 20, 1946 the Secretary of the Interior will consider and determine the value of the offered and selected land and will not approve an exchange unless the values of the offered and selected land are approximately equal. In determining such values, consideration will be given to such matters as the actual appraised value of the lands, the benefits of consolidation or blocking out of land holdings by the State and Federal government as a result of the proposed exchange, the size of the areas involved, the value of the surface or other resources, * * *." 43 CFR, 1954 ed., 147.2(b).

The Department has consistently held that an application or petition for classification of public lands secures no right in the applicant other than the right to have his application duly considered John R. Ross et al., A-27259 (March 12, 1956); George T. Aldridge et al., A-26805 (February 8, 1954); and that public lands are not subject to disposal until classified as suitable for disposal and opened to entry; Nelson A. Gerttula, 64 I.D. 225 (1957); State of California et al., A-26816 (February 17, 1954). Moreover, the decision as to whether the lands will be classified as suitable for disposal by State indemnity

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3/ The township plats covering the lands in T. 28 N., R. 1 E., S.B.M.; T. 27 N., R. 2 E., T. 28 N., R. 3 E., and T. 29 N., R. 1 E., were approved March 19, 1858. The plat covering the lands in T. 18 N., R. 5 E., was approved February 21, 1857. The $E\frac{1}{2}NE\frac{1}{4}$ sec. 16, T. 22 N., R. 3 E., S.B.M., California, are unsurveyed lands.

selection, public sale, Indian allotment, or not at all depends upon the general public interest in the matter. Nelson A. Gerttula, supra (43 U.S.C., 1952 ed., 315f). 4/

The Department recognizes the right of the State to select vacant public lands under the Act of February 28, 1891, supra. However, the selection right carries with it no right to a particular tract of land. Refusal to classify and open lands as requested in a particular selection is neither to repudiate nor to destroy the selection right. It continues unimpaired and will be permitted to be satisfied when exercised with reference to lands which meet the statutory conditions and which, if reserved, 5/ are duly restored to selection without injury to the public interest. Cf. Nelson A. Gerttula, supra.

The Indian allotment and the public sale applications were filed subsequent to either the State indemnity selection applications or timber sale applications and in most cases both. 6/ In a majority of instances timber sale applications were filed prior to the State indemnity selection applications and amendments thereto. However, the issue in this particular case is what type of disposal, if any, is most nearly in the public interest.

In State of California, 59 I.D. 451, 452 (1947), the Department stated as follows:

> "The selected lands are very valuable timberland. They can properly be used as a means of assuring the future timber production and thereby promoting the stability of the forest industry. * * * Under these circumstances, it is reasonable and in accord with general Congressional policy not to classify the lands as proper for indemnity selections."

We believe that case to be controlling here. Moreover, as previously indicated, the Bureau has expended considerable funds in cruising the timber with a view to the orderly disposal of the timber resources. Cf. State of California, Jack Clark Gutte, A-26816 (February 17, 1954).

State indemnity selection application Sacramento 048308 as filed April 26, 1954, included only the lands in secs. 1 and 3, T. 1 S., R. 4 E. The application was later amended on February 28, 1956, and a

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4/ For further Departmental rulings in State indemnity selections involving public interest in classification see State of California et al., 64 I.D. 459 (1957).

5/ All the lands applied for were withdrawn for classification by Executive Order No. 6910 of November 26, 1934.

6/ Except as to certain lands involved in the amendments to State indemnity selection application Sacramento 048308 that are not included in a timber sale application or contract. Such applications are being returned to the field for appropriate consideration.

gain on May 6, 1957, to include additional lands. There are no timber sale applications or timber sale contracts covering part of the lands included in these amendments nor is the record clear as to the suitability of these lands for disposal by State indemnity selection. Therefore, the case record in State indemnity selection application Sacramento 048308 is being returned to the Manager through the State Supervisor for appropriate action with respect to the following described lands:

T. 1 S., R. 3 E., sec. 4: SE¼NW¼
T. 1 S., R. 4 E., sec. 7: lots 2, 3, SE¼SW¼
T. 1 S., R. 4 E., sec. 18: SW¼NE¼, SE¼NW¼
T. 1 S., R. 4 E., sec. 30: SE¼NW¼

The applications in the following cases are returned for appropriate action after a determination is made by the field of the proper disposition that should be made of the lands involved consistent with the findings of this decision:

Indian Allotment Application No.	Public Sale Application No.	Timber Sale Application No.
Sacramento	Sacramento	Sacramento
051250	048885	042054
051251	049890	043410
051252	050018	043953
051253	052652	047364
051255	052819	048020
051256		048551
051406		050130
050491		
050492		

After careful review and consideration of all of the evidence in the record, including representations of the appellant, the decisions of the Manager of September 19, 1955, are hereby affirmed, as modified.

The State of California is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

If an appeal is taken appellant must serve a copy of all documents on any adverse party involved within 15 days after filing the

document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal. (An adverse party in this case would be any person whose application covers lands also included in the application of the appellant.) The names and addresses and Land Office serial numbers of all of the applicants involved are as follows:

Land Office Serial Number	Name of Applicant or Appellant	Address
Sacramento		
048376	State Lands Commissioner,	
048377	State of California	Sacramento 14, California
048306	"	"
048307	"	"
048308	"	"
051252	Leonard E. Wells	Post Office Box 729 Fortuna, California
051251	Kenneth Wells, Jr.	same
051250	Kenneth H. Wells	same
051253	Georgiana Wells	same
051255	George J. Ruise	21805 Arnold Drive Sonoma, California
051406	Robert Ruise	same
051256	James W. Ruise	same
050491	Billie Rae Willburn	Post Office Box 201 Ferndale, California
050492	Ralph Lin Willburn	same
052652	James K. Brook	Lazy J-B Ranch Bridgeville, California
052819	California Eastern Timber Company	Post Office Box 1029 Eureka, California
050018	Ruth D. Woodcock Ansen R. Johnson	Alton, California 2070 Dairy Avenue Newark, California
048885	Ralph V. Carter et al.	Star Route Carlotta, California
049890	same	same
042054	Truman O. Foley	1341 Union Street San Francisco, California
043953	Carter Brothers Lumber Co.	Hydesville, California
048551	E. F. Davis	Post Office Box 14 Weott, California

(Cont'd on page 7)

Land Office Serial Number	Name of Applicant or Appellant	Address
Sacramento		
051030	C. H. Lumber Company	Bridgeville, California
047364	Carl W. Windbigler	Circle Bar Ranch Blocksburg, California
043410	Charles P. Holmes	6124 South East 41st Avenue Portland 2, Oregon
048020	Bridgeville Lumber Co.	1536 "P" Street Eureka, California

The applications are also listed by Land Office serial No. and by legal description for each application filed on Appendix 1. This shows all of the conflicts, if any, for each application filed by smallest legal subdivision.

Earl D. Thomas
Acting Director

Attachments

DISTRIBUTION:

State Lands Commission, State of California (Certified Mail)
Leonard E. Wells (Regular Mail)
Kenneth H. Wells (Regular Mail)
Kenneth Wells, Jr. (Regular Mail)
Georgiana Wells (Regular Mail)
James W. Ruise (Regular Mail)
George J. Ruise (Regular Mail)
Robert Ruise (Regular Mail)
Ralph Lin Willburn (Regular Mail)
Billie Rae Willburn (Regular Mail)
James K. Brock (Regular Mail)
California Eastern Timber Company (Regular Mail)
Ruth D. Woodcock (Regular Mail)
Ansen R. Johnson (Regular Mail)
Ralph Carter et al. (Regular Mail)
Truman O. Foley (Regular Mail)
Carters Brothers Lumber Company (Regular Mail)
E. F. Davis (Regular Mail)
C. H. Lumber Company (Regular Mail)
Carl W. Windbigler (Regular Mail)
Charles P. Holmes (Regular Mail)
Bridgeville Lumber Company (Regular Mail)
CFG

APPENDIX 1

T.	R.	Sec.	Subdivision	State Indemnity Selection Application No.	Indian Allotment Application No.	Public Sale Application No.	Timber Sale Application No.
1 N.	4 E.	17	$S\frac{1}{2}SE\frac{1}{4}$	Sacra. 048376	-	-	Sacra. 048551, 042054
		20	$E\frac{1}{2}SW\frac{1}{4}$, $E\frac{1}{2}$	same	-	-	same
		21	$SE\frac{1}{4}SE\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}$				
			$SW\frac{1}{4}NW\frac{1}{4}$	048377	Sacra. 051252	-	same
			$SW\frac{1}{4}$	same	051251	-	same
		22	$S\frac{1}{2}SW\frac{1}{4}$	same	051255	-	same
		27	$NW\frac{1}{4}NW\frac{1}{4}$	same	-	-	same
		34	$SE\frac{1}{4}NW\frac{1}{4}$, $E\frac{1}{2}SW\frac{1}{4}$	048306	051256	-	050130
			$S\frac{1}{2}NE\frac{1}{4}$	same	051250	-	same
			$SE\frac{1}{4}$	same	051253	-	same
		35	$S\frac{1}{2}NW\frac{1}{4}$	same	051250	-	same
			$SW\frac{1}{4}$	same	051406	-	same
			$SW\frac{1}{4}SE\frac{1}{4}$	same	051256	-	same
1 S.	4 E.	2	lots 2, 3, 4 $S\frac{1}{2}N\frac{1}{2}$, $N\frac{1}{2}SW\frac{1}{4}$				
			$SE\frac{1}{4}$	048307	-	Sacra. 052652	same
	3 E.	12	$S\frac{1}{2}NE\frac{1}{4}$	same	-	-	043410
	4 E.	1	$SW\frac{1}{4}NW\frac{1}{4}$, $SW\frac{1}{4}SW\frac{1}{4}$	048308	-	052652	050130
		3	lot 2	same	-	-	same
		7	lots 2, 3	same	050492	-	-
			$SE\frac{1}{4}SW\frac{1}{4}$	same	050491	-	-
		18	$SE\frac{1}{4}NW\frac{1}{4}$, $SW\frac{1}{4}NE\frac{1}{4}$	same	-	-	-
			$NE\frac{1}{4}NE\frac{1}{4}$	same	-	-	047364
		30	$SE\frac{1}{4}NW\frac{1}{4}$	same	-	052819	-
	3 E.	4	$SE\frac{1}{4}NW\frac{1}{4}$	same	-	-	-
1 S.	3 E.	12	$NE\frac{1}{4}NE\frac{1}{4}$	same	-	-	043410
1 N.	4 E.	1	$SE\frac{1}{4}SW\frac{1}{4}$	same	-	050018	048020
		15	$NW\frac{1}{4}SW\frac{1}{4}$	same	-	048885	043953
1 N.	4 E.	23	$SW\frac{1}{4}NW\frac{1}{4}$	same	-	049890	same

appeal to be affirmed A-27805 2-19-59

In reply refer to:
Los Angeles 094312
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C. June 26, 1958

Certified Mail
Return Receipt Requested

DECISION

State of California : State Indemnity Selection

Manager's Decision Affirmed

The State of California* has appealed from a decision of the Manager, which rejected its indemnity selection application because the lands are prospectively valuable for potash, borates and sodium, and the exercise of surface rights thereon might interfere unreasonably with operations under the mineral leasing laws.

The appeal asserts that the leaseable minerals would be reserved to the United States and that surface operations would not conflict with utilization of the mineral estate.

The applicable regulations, 43 CFR, 1954 ed., 102.30, pursuant to the act of March 4, 1933, 30 U.S.C., 1952 ed., sec. 124, contemplate that lands lying within the geologic structure of a field, or withdrawn, classified, or reported as valuable for sodium shall not be subject to appropriation, location, selection, entry, or purchase unless it shall be determined by the Secretary of the Interior that such disposal will not unreasonably interfere with operations under the mineral leasing laws.

The Geological Survey has found that disposal of these lands might interfere unreasonably with operations under the mineral leasing laws. Present methods of mineral recovery by brine wells would be interfered with because of close well spacing and the running of gathering lines on the surface (the brine is only a few inches below the surface and at times the surface may be covered with additional water following precipitation and the accummulation of runoff). The return of the plant effluent to the lake is essential to the maintenance of the crystal body. Ditches for this purpose are on the surface of the land involved. Further, any future attempt that might be made at recovery of the minerals in the solid phase at shallow depths would be interfered with as stripping or open cut work would necessarily destroy the surface. No convincing evidence has been offered by the State to rebut this finding.

* Frank M. Darrow joined in the appeal. It appears that he has no standing to be heard in the matter. Cf. State of Utah, A-25740 (August 31, 1949).

Accordingly, the Manager's decision is affirmed.

The State of California is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Trover

Enclosure

Distribution:

State of California, State Lands Commission (Certified Mail)
Lands Staff Officer
Appeals List No. 1
EVJ

37405

In reply refer to:

Sacramento 047526
047620, etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 12, 1958

Certified Mail
Return Receipt Requested

DECISION

State of California	:	State Indemnity Selections
Fred V. and Jeanne E. Johnson	:	Public Sale
	:	

State Selections Reinstated
Public Sale Application Rejected

The State of California* has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Sacramento, California, dated October 22, 1956, rejecting the State's request for reinstatement of indemnity school selection applications, Sacramento 047620, 047621, and 047622.

The records show that on October 28, 1953, the State of California filed its applications under the indemnity school land laws to select certain lands in T. 6 S., R. 4 E., M.D.M., California. By decision of March 19, 1956, the Manager of the Land Office rejected in their entirety Sacramento 047621 and 047622, and by a separate decision of the same date rejected in part Sacramento 047620. The reasons for the rejection were stated as being that public sale application of Fred V. and Jeanne E. Johnson, Sacramento 047526, had been filed for the lands on September 22, 1953, which was prior to the filing of the State's indemnity selection applications; and that the lands were classified as suitable for disposal under the public sale law. Since no appeals were received within the time allowed, Sacramento 047621 and 047622 were closed on June 11, 1956, and Sacramento 047620 on June 12, 1956, as to the rejected portion.

The State alleges that: (1) the public sale application was originally filed on September 22, 1953; (2) it was returned for the signature of witnesses and applicants failed to comply within the time allowed and the case was closed on November 17, 1953, and was not reinstated until November 25, 1953, when the application was returned to

* The State of California has joined in an appeal filed by George M. and Arthur E. LeDeit, prospective purchasers of the land from the State. The LeDeits, however, have no rights against the United States and therefore no standing to appeal from the decision. See State of Utah, A-25740 (August 31, 1949).

the Land Office; (3) the indemnity selection applications having been filed October 28, 1953, which was prior to the curing of the defect in the public sale application and the reinstatement thereof, the public sale application could not take the original date of filing, September 22, 1953, as the date of reinstatement; and (4) it was not discovered that the public sale applicants had failed to comply with the proper requirements made of them, until the time allowed the State within which to appeal had elapsed.

Applications made by the States in the exercise of their lieu selection rights should, as a matter of principle, be honored over competing private applications for the same lands, even though the latter may more nearly fit the characteristics of the lands, and even though the State selection is filed after the competing private applications, so long as it is filed within a reasonable time after such applications. State of California, et al., 64 I.D. 459 (1957).

The record shows, however, that the public sale application, Sacramento 047526, has never been a properly filed application. The application, as resubmitted to and reinstated by the Manager on November 25, 1953, was signed by only one corroborating witness.

43 CFR 250.3(b) provided as follows:

> "The application need not be under oath but must be signed by the applicant and two corroborating witnesses having personal knowledge of the facts stated therein."

And 250.4(a) provided in pertinent part as follows:

> "If an application is not properly executed or not corroborated, * * * the application will be rejected."

The assumption by the Manager that the application was properly filed on November 25, 1953, does not correct the defect in the application. The application has been subject to rejection at any time the defect is discovered. Cf. Duncan Miller, A-27535 (March 10, 1958).

Since there are no intervening rights and since the State has applied for reinstatement of its applications within six months of their erroneous rejection, we conclude that their reinstatement may be allowed. See State of Louisiana, et al., A-26980 (December 29, 1954).

The Manager's decision of October 22, 1956, is reversed. Accordingly, the public sale application is rejected, and the State's indemnity selection applications are reinstated. When this decision becomes final, the indemnity selection applications shall be given

further appropriate consideration in the light of the principles in this decision.

Fred V. and Jeanne E. Johnson are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Fred V. and Jeanne E. Johnson, then the adverse party to be served is:

Mr. Kenneth C. Smith
State Lands Division
State of California
Sacramento 14, California.

Acting Director

Enclosure

DISTRIBUTION:

Mr. and Mrs. Fred V. Johnson (Certified Mail)
State of California, State Lands Division, Sacramento, Calif. (Regular Mail)
Mr. William F. Ehlert (Regular Mail)
Mr. Robert A. Fletscher (Regular Mail)
Hon. Charles S. Gubser, Member of Congress
Lands Staff Officer
Appeals List No. 1
AIR

39080

further appropriate consideration in the light of the principles in this decision.

Fred V. and Jeanne E. Johnson are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 1-1395. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Fred V. and Jeanne E. Johnson, then the adverse party to be served is:

Mr. Kenneth C. Smith
State Lands Division
State of California
Sacramento 14, California.

Acting Director

Enclosure

DISTRIBUTION:

Mr. and Mrs. Fred V. Johnson (Certified Mail)
State of California, State Lands Division, Sacramento, Calif. (Regular Mail)
Mr. William F. Enlert (Regular Mail)
Mr. Robert A. Fletcher (Regular Mail)
Hon. Charles S. Gubser, Member of Congress
Lands Staff Officer
Appeals Unit No. 1
AIR

In reply refer to:

Sacramento 048892
5.04g

July 22, 1958

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

State of California : State Indemnity Selection

Manager's Decision Affirmed

The State of California 1/ has appealed from a decision of the Manager, rejecting its indemnity school selection application stating that the land applied for is valuable for the production of timber and is part of a larger block of public domain which is under active sustained yield management of the timber resources.

The land selected by the State of California must be classified as subject to disposition as an indemnity selection before its application may be allowed. State of California, A-25971 (March 6, 1951). To be so classified, there must not be any Federal interest which makes such a determination inadvisable. Id., State of Nevada, A-26745 (May 20, 1953).

The land selected by the State is part of the Sacramento Forestry District's sustained yield timber management area. This area is under an active management program in conjunction with the other timber lands of the North Coast Unit. Disposal of the selected lands would isolate the remaining lands and make more difficult their management, and would also create an access problem to the remaining government land in the vicinity. Furthermore, disposal would be incompatible with the conservation of timber resources. The field examination discloses that the lands support a stand of commercial timber containing an estimated volume of 4,900 M f.b.m.

1/ An appeal, concurred in by the State of California, was filed by attorneys on behalf of J. R. Hunt and Irma L. Hunt, presumably the prospective purchasers from the State of California. The prospective purchasers and their attorneys have no standing to appeal, State of California, A-25127 (December 14, 1948), and will not be served with copies of this decision.

Therefore, the allowance of the State's application would interfere with a public program for the best utilization of an area of public land in which the selected land lies and would be contrary to the public interest in the conservation of timber resources. The State's application was properly rejected. State of California, A-26816 (February 17, 1954).

Accordingly, the decision of the Manager is affirmed.

The State of California is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

John B. Peccolo

Enclosure

DISTRIBUTION:

Division of State Lands, State of California (Certified Mail)
Lands Staff Officer
Appeals List No. 1
AIR

In reply refer to:

Los Angeles 0117693
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 13, 1958

Certified Mail
Return Receipt Requested

DECISION

State of California : State Indemnity Selection

Manager's Decieion Affirmed as Modified

The State of California 1/ has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated May 21, 1956, which rejected the State's application to select the $W\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}$, $W\frac{1}{2}E\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}$, $W\frac{1}{2}W\frac{1}{2}SW\frac{1}{4}SE\frac{1}{4}$, sec. 12, T. 10 N., R. 13 W., S.B.M., California, as an indemnity selection for the stated reason that the lands had been classified for small tract purposes.

The records show that on March 4, 1953, a mineral examination was made of the $NW\frac{1}{4}$, $NE\frac{1}{4}SW\frac{1}{4}$, and $SE\frac{1}{4}$, sec. 12, T. 10 N., R. 13 W., S.B.M. The examiner found the $SE\frac{1}{4}$ of sec. 12 within the mineralized Soledad Mountain area; and that the groundmass consists of volcanic flows associated with quartz masses and altered metallic minerals carrying values in gold. A portion of the Consolidated group of mining claims was found in the $SE\frac{1}{4}SE\frac{1}{4}$. The report recommended the classification of the $E\frac{1}{2}SE\frac{1}{4}$, $SW\frac{1}{4}SE\frac{1}{4}$, and $S\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}$, sec. 12 of the township mentioned above as mineral lands. It was also recommended that the $NW\frac{1}{4}$, $NE\frac{1}{4}SW\frac{1}{4}$, and $N\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}$, which were found to be valuable for development as home and cabin sites, be classified for disposal under the Small Tract Act.

1/ The appeal was filed by John Lloyd Johnson and concurred in by the State of California. Although Johnson appears to be the prospective purchaser of the lands from the State, should the application be favorably acted upon, he has no standing in this proceeding. Cf. State of Utah, A-25740(August 31, 1949). Therefore, he will not be served with a copy of this decision.

On June 23, 1954, after the recommendation for small tract classification of the lands had been made, but before a small tract classification order was issued, the State of California filed the indemnity school selection application in behalf of Mr. Johnson. However, by Order No. 471 of February 21, 1956, the lands applied by the State, and other lands, were classified as suitable for small tract purposes under the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., Supp. IV, sec. 682a). The classification order was published in 21 F. R. 1374.

According to the findings of the field examination, the lands selected by the State, except the $N\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}$, sec. 12 of the same township, are mineral lands. The State's application should have been rejected because the lands other than the 20 acres described above are mineral in character. 43 U.S.C. 852 provides in part that indemnity selection shall be made "* * * from any unappropriated, surveyed public lands, not mineral in character.* * * *" Cf. State of Wyoming, 54 L.D. 590 (1916).

The records show that small tract applications, shown as Appendix "A", have been filed for the lands selected by the State of California. Seven of the small tract applications were filed over two years prior to the filing of the State's application. 2/ State selections are to be preferred over conflicting private applications for the same land, even though the State application may have been filed subsequent to the private application. However, in order to merit preferential consideration, the State must be diligent in exercising its selection right. Otherwise, prior competing applications will normally be granted the equitable consideration to which they are entitled. Where the State did not file its application until some eleven months after the conflicting private applications, the State was deemed not to be sufficiently diligent to warrant preferential consideration. Nelson A. Gerttula, 64 I.D. 225 (1957). The Gerttula case is dispositive of the issue of preferential consideration of the appellant's application as against the prior filed small tract offers. As to the small tract offers filed after the State's application, in State of California et al., A-27507 (December 13, 1957), the Department stated that a prior State selection must be rejected in favor of small tract applications where the State selection was considered along with the applications for small tracts and the land was found to be primarily valuable for small tract purposes. Therefore, the classification of the lands as suitable for small tract purposes is correct.

2/ As to the $N\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}$ sec. 12, the records show that three small tract offers for lands therein, aggregating 15 acres, were filed in 1952; the other five acres are included in a small tract offer filed in 1955. The following discussion in the body of the decision is directed to 20 acres described above, since the remainder of the land in the State's application is mineral in character and therefore would not be subject to disposal under the indemnity laws, absent small tract interest in the land.

As to the request for a hearing in Margaret A. Andrews, Charles B. Gonsales, (64 I.D. 9 (1957), the Department held that a hearing would not be granted where there is no reasonable likelihood that a hearing would develop facts decisive of the issues involved. Therefore, the request for a hearing is denied.

The Manager's decision is affirmed as modified.

The State of California is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by the State of California, the adverse parties to be served are the person list in Appendix "A", attached.

For the Director:
John B. Piccolo

Attachment

DISTRIBUTION:

State of California, State Lands Division
Each Small Tract Applicant
Lands Staff Officer
Appeals List No. 1
ALR

APPENDIX "A"

Case No. Los Angeles	Applicant and Address	Filed
092780	John W. Watkins, P. O. Box 126, Edwards, California	2/4/52
092781	John A. Vaughn, Route #1, Box 224, Lancaster, California	2/4/52
092783	Garth L. Dill, Willow Springs, Rosamond, California	2/27/52
092923	Roger D. Guilmette, Gen. Delivery, Edwards, California	2/11/52
093244	Mrs. Jetta L. Simpson, 609 Lincoln Ave. Oildale, California	3/12/52
093392	Erwin O. Oberhaus, 5037 Loleta Ave., Los Angeles, California	2/29/52
093922	Mrs. Wilma S. Schaffer, 44302 N. 3rd St. East Lancaster, California	3/21/52
0131322	Mrs. Harriett H. Wierschke, 331 Sunnyslope Ave. Petaluma, California	4/5/55
0131463	Herman D. McIntosh, 5540 Telegraph Road, Ventura, California	4/7/55
0132421	Dr. Richard L. McIntosh, 628 Broadway St. Alexandria, Minnesota	4/29/55
0136246	Mrs. Katherine M. Baker, 8658 East Ave. H, Lancaster, California	10/26/55
0136315	Mrs. Else M. McKenzie, Box 184 — 122 Oakview Dr. Thousand Oaks, California	10/26/55

APPENDIX "A"

Case No. Los Angeles	Applicant and Address	Filed
092760	John M. Medina, P. O. Box 126, Edwards, California	2/4/52
092781	John A. Vaughn, Route #1, Box 229, Lancaster, California	2/4/52
092783	Garth L. Dill, Willow Springs, Rosamond, California	2/21/52
092823	Roger D. Gutierrez, Gen. Delivery, Edwards, California	2/11/52
092844	Mrs. Zetta I. Simpson, 609 Lincoln Ave. Oildale, California	2/12/52
092852	Myrna G. Oberhaus, 5037 Loleta Ave., Los Angeles, California	2/26/52
092852	Mrs. Wilma E. Gehrtzer, 44306 N. 3rd St. West Lancaster, California	2/21/52
013232	Mrs. Merriett M. Wiersobke, 331 Sunnyslope Ave. Petaluma, California	4/3/52
013463	Reuben D. McClaskey, 8740 Telegraph Road, Ventura, California	4/4/52
013643	Dr. Richard I. McIntosh, 6628 Broadway Av. Alexandria, Minnesota	4/29/52
013646	Mrs. Katherine M. Baker, 6638 East Ave. R, Lancaster, California	10/26/52
013715	Mrs. Ella M. McKenzie, Box 1061 — 1232 Oakview Dr. Thousand Oaks, California	10/26/52

In reply refer to:

Los Angeles 056544
091834
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 9, 1958

Certified Mail
Return Receipt Requested

DECISION

Mrs. Douglas G. Shearer	:	Grazing lease
State of California	:	State indemnity selection

Decision of Acting District Range Manager Affirmed as Modified

Mrs. Douglas G. Shearer has appealed from a decision of the Acting District Range Manager which in effect rejected her application for renewal of her grazing lease Los Angeles 056544 because the lands had been classified as suitable for indemnity selection by the State of California.

Appellant alleges on appeal that (1) she has reseeded approximately 3 acres of the land at an expense of $150; (2) the fence that extends along the easterly side of the highway right-of-way for a distance of about 3,000 feet over the public lands involved was placed there by the State Highway Department for the express benefit of the grazing lessee, Mrs. Douglas G. Shearer, as partial compensation for highway rights-of-way acquired from her by the State, and (3) cancellation of the lease would make it necessary to install a fence on the lessee's deeded lands. Therefore appellant asserts that either the lease should be renewed; or in accordance with section 3(e) of the lease terms the subsequent "lessee" should be required to remove the existing fence which extends along the highway right-of-way across the leased lands and place it along the property line between the Shearer's deeded lands and the public lands involved.

The record shows that the lands consist of an isolated tract that is not required for retention in federal ownership for any purpose and that the lands have been classified as suitable for state indemnity selection by the State of California.

The Department has consistently held that a grazing lease may be canceled where the lands have been properly classified for disposal unless it appears that cancellation of the lease would seriously interfere with the lessee's grazing operations. Gladys M. Waters, A-27394 (December 20, 1956). The appellant has not shown that cancellation of the lease would seriously interfere with her grazing operations, Gladys M. Waters, supra.; or submitted any conclusive evidence of error in the classification of the lands as suitable for state indemnity selection. Cf. Mary Refugio Jackson et al., A-27236 etc. (February 29, 1956). It appears that the lands were properly classified as suitable for disposal. Therefore, the decision of the Acting Range Manager is affirmed as to the cancellation of the grazing lease.

As to compensation for the value of range improvements, Section 3(e) of the lease terms provides for compensation to the lessee for the value of improvements placed upon the lands in accordance with applicable regulations. The regulation 43 CFR, 1954 ed., 160.12(a), provides in part that lands embraced in a grazing lease are subject to classification and disposition under appropriate public land laws providing the applicant agrees to compensate the grazing lessee for any grazing improvements placed upon the lands under authority of a lease or permit. The regulation governing the construction and maintenance of improvements of public lands under lease (43 CFR, 1954 ed., 160.17) provides that after the issuance of a lease, the lessee may fence of otherwise improve the leased lands if he obtains a permit or enters into cooperative agreement with the appropriate Bureau Official to do so. The record does not reveal that any permit or cooperative agreement was ever issued to Mrs. Shearer for the construction and maintenance of improvements pursuant to grazing lease Los Angeles 056544.

However, Mrs. Shearer would nevertheless be entitled to compensation for any improvements placed on the lands by her or for her benefit pursuant to a lease in force prior to November 4, 1948 (43 CFR, 1938 ed., 160.22).

Therefore, when the decision becomes final, Mrs. Douglas A. Shearer will be allowed 30 days from receipt of notice from the Assistant to the State Supervisor, Bureau of Land Management, Room 1314, Bartlett Building, 215 West Seventh Street, Los Angeles 14, California to file with him appropriate evidence of ownership of any fences, reseeding, or other improvements together with a showing that these improvements were placed upon the lands under authority of a grazing lease in effect prior to November 4, 1948. If the required showing is made, appropriate consideration will be given to compensation for the value of improvements owned by her in accordance with 43 CFR, 1954 ed., 160.12. If she fails to make the required showing, the case will be closed without further notice.

Mrs. Shearer is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See Form 4-1365, attached. If an appeal is taken there must be strict compliance with the regulations.

In the event of an appeal the adverse party to be served is:

State Lands Commissioner
Division of State Lands
State of California
1403 12th Street
Sacramento 14, California

For the Director:

Enclosure

DISTRIBUTION:
Mrs. Douglas G. Shearer (Certified Mail)
State Lands Commissioner, Division of State Lands, State of California
(Regular Mail)
Lands Staff Officer (1)
Range Staff Officer (1)
Appeals List No. 1
CFG

42059

appeal to Sec / affirmed A-27928 6-15-59

In reply refer to:
Contest No. 6779
(Los Angeles 092489)
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

(October 20, 1958)

Certified Mail
Return Receipt Requested

DECISION

Augusta G. Stanley,
Contestant

v.

State of California,
Contestee

State Indemnity Selection

Hearing Examiner's Decision Affirmed

Mrs. Augusta G. Stanley has appealed from a decision dated May 9, 1957, by Hearing Examiner Graydon E. Holt, dismissing her protests against the selection by the State of California, under the General Indemnity Act (43 U.S.C., 1952 ed., sec. 851) of three tracts of land which she alleges to be mineral in character, and on which she claims to have made two mining locations, the Stan-King No. 1 and the Stan-King No. 2. 1/

The alleged mining locations were made after the classification of the land as suitable for disposal to the State. In an earlier proceeding involving these lands, the Department held that Mrs. Stanley, if she wishes to contest the State selection, would have the burden of proving the validity of her claims. Mrs. Stanley was allowed a certain period of time within which to initiate the contest. Augusta G. Stanley, State of California, A-26959 (November 15, 1954).

Mrs. Stanley did not proceed within the time prescribed in the Departmental decision, but when the notice of selection was published in the local newspaper she filed, as she was entitled to do, an

---

1/ The three tracts involved are:
(A) $W\frac{1}{2}W\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$ sec. 26, T. 6 S, R. 1 E, S.B.M., California
(B) $NE\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$ sec. 26, T. 6 S, R. 1 E, S.B.M., California
(C) $SE\frac{1}{4}SW\frac{1}{4}$ sec. 36, T. 6 S, R. 1 E, S.B.M., California

Stan-King No. 1 is on tract (A) and Stan-King No. 2 is on tract (C). The contestant had not located a claim on tract (B).

application to contest. Pursuant to this application, a hearing was held in Los Angeles, California, on February 7, 1957.

Although Mrs. Stanley attempted to introduce into the record matters relating to the purported obstruction of roads in the area by the individual on whose behalf the State indemnity selection was made and although the attorneys for the State and its applicant also put into the record testimony relating to the use of roads, the Hearing Examiner properly pointed out that the contest, held pursuant to 43 CFR 270.11, was limited to a consideration of the mineral nature of the land, and the validity of Mrs. Stanley's mining claims.

Mrs. Stanley prosecuted the contest herself, and was the only witness on her behalf. She introduced into evidence an affidavit as to the presence of tin in the general area by one who had prospected there from 1934 to 1936. She also introduced into evidence many photographs - most of them purporting to show blocked roads.

The State of California presented as a witness a geologist who testified as to the nonmineral nature of the land. The Hearing Examiner found the land to be nonmineral, and declared the mining claims null and void. Accordingly, the contest was dismissed.

Mrs. Stanley, in her appeal, states that the evidence pertaining to the blocking of the roads should have been considered; that the Hearing Examiner's legal description in his decision of one of the three tracts involved was incorrect, and the decision therefore defective; and that it was error to find the land nonmineral in nature, in view of its admitted lack of value for agriculture.

The record made at the hearing has been carefully reviewed, and it is found that the determination by the Hearing Examiner that the land is nonmineral in nature is fully supported by the evidence presented. The Hearing Examiner's ruling that the question of access to roads in the area was not within the purview of the hearing is also found to be correct. Further, the Department has no jurisdiction to entertain protests relating to access to County or privately owned roads.

In his decision, the Hearing Examiner erroneously referred to the $W\frac{1}{2}W\frac{1}{2}SE\frac{1}{4}$ of section 26 as one of the tracts involved; actually, the State had applied for the $W\frac{1}{2}W\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$ of section 26. Since the testimony on which the decision was based had clearly and unequivocally been directed to the $W\frac{1}{2}W\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$ of section 26 (Tr. 49, 51), the mistake in the description of the land in the decision does not import an actual mistake in the land which was the subject of the hearing, and is not a defect which requires another hearing, or a different conclusion. It is a mere typographical error, and can be remedied by a stroke of the pen.

The appellant further contends that land is valuable for minerals when metal is found "in such quantity as to render the land more valuable on that account than for agricultural purposes ***."

Mrs. Stanley concludes that since the land admittedly has no agricultural value, it has, perforce, mineral value. This argument is without merit, and, based upon a rule which applies only when land is valuable to a certain extent both for agriculture and minerals, is not applicable when the land is devoid of value for either purpose.

The decision of the Hearing Examiner is therefore affirmed. When this decision becomes final, appropriate action will be taken to transfer to the State the land included in its selection.

Mrs. Stanley is allowed the right to appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mrs. Stanley, then the adverse parties to be served are:

Howard S. Goldin
Deputy Attorney General
State of California
Room 600, State Building
Los Angeles 12, California

Orville O. Clarke
Attorney at Law
1020 Securities Building
510 S. Spring Street
Los Angeles 13, California

Edward Woozley
Director

Enclosure

Distribution:

Mrs. Augusta G. Stanley (Certified Mail)
Mr. Howard S. Goldin (Regular Mail)
Mr. Orville O. Clarke (Regular Mail)
Lands Staff Officer
Appeals List No. 1
MG

In reply refer to:
Sacramento 048110
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 29, 1958

Certified Mail
Return Receipt Requested

DECISION

State of California : State Indemnity Selection

Manager's Decision Affirmed

The State of California * has appealed from a decision of the Manager which rejected in part its indemnity school selection application because the land is valuable for the production of timber and is part of a larger block of public domain which is under active sustained yield management of the timber resources.

The land selected by the State of California must be classified as subject to disposition as an indemnity selection before its application may be allowed. State of California, A-25971 (March 6, 1951). To be so classified, there must not be any Federal interest which makes such a determination inadvisable. State of Nevada, A-26745 (May 20, 1953).

The land in issue is part of the Sacramento Forestry District's sustained yield timber management area, and is under active management program in conjunction with other timber lands. Disposal of the selected lands would create management problems and increase the cost of administration of the remaining government land in the vicinity. Furthermore, disposal would be incompatible with the conservation of timber resources. The record discloses that the lands support a stand of commercial timber containing an estimated volume of 6,500,000 board feet of timber.

Therefore, the allowance of the State's application would be contrary to the public interest in the conservation of timber resources. State of California, A-26816 (February 17, 1954).

Accordingly, the State's application was properly rejected, and the decision of the Manager is affirmed.

---

* The appeal, concurred in by the State of California, was filed by Frank P. Donahue, presumably the prospective purchaser from the State of California. The prospective purchaser has no standing to appeal. State of California, A-25127 (December 14, 1948).

The State of California is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A N Zion

Enclosure

Distribution:

Division of State Lands, State of California (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

43552

In reply refer to:
Sacramento 048110
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 29, 1958

Certified Mail
Return Receipt Requested

DECISION

State of California : State Indemnity Selection

Manager's Decision Affirmed

The State of California * has appealed from a decision of the Manager which rejected in part its indemnity school selection application because the land is valuable for the production of timber and is part of a larger block of public domain which is under active sustained yield management of the timber resources.

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Therefore, the allowance of the State's application would be contrary to the public interest in the conservation of timber resources. State of California, A-26816 (February 17, 1954).

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---

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The State of California is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

Distribution:

Division of State Lands, State of California (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

43552

appeal to Sec
affirmed A-27987 8/6/59

CLASSIFICATION * 1 Generally
STATE INDEMNITY SELECTIONS * 1 Generally

Public land which comprises a part of a larger block of vacant public lands is properly classified as proper for retention in public ownership and unsuitable for state selection where the land contains livestock water required for the management of the remaining public lands in the area, the land comprises the more level portions of the valley floor and disposal would interfere with livestock distribution over the remaining public lands within the valley, and the land is valuable for wildlife propagation and hunting and camping by the public in general.

Public land which is adjoined along its north, south and east boundaries by deeded lands, and along its west boundary by a high, rough ridge which isolates the land from the adjoining public lands to the west, the land is inaccessible from roads, and the land contains no resources required for public management or public use is properly classified as suitable for state indemnity selection.

RULES OF PRACTICE * 8 Protests

A protest against the approval of a state indemnity selection will be dismissed where the land is adjoined along its north, south, and east boundaries by deeded lands, and along its west boundary by a high, rough ridge which isolates the land from other public lands in the area, the land is not accessible to roads, contains no resources required for public purposes, and the protestant has failed to show that cancellation of the grazing use would seriously interfere with the permittee's grazing operations.

State of California, Sacramento 047432, etc. (December 12, 1958)

In reply refer to:

Sacramento 047432
047433
047434
047437
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 12, 1958

Certified Mail
Return Receipt Requested

DECISION

State of California (Applicant : State Indemnity Selection
Bess Fulstone et al. (Protestants) :
:
:

Decisions of the Manager Affirmed as to State Indemnity Selection Applications, Sacramento 047432, 047433: Manager Affirmed in Sacramento 047434 As to the W½ Sec. 17, T. 9 N., R. 22 E.; Reversed As to the S½, Sec. 29, T. 9 N., R. 22 E: Reversed as to Sacramento 047437: Protest of Mrs. Bess Fulstone et al. Dismissed as to Lands in S½ Sec. 29 of Sacramento 047434 and all as to Sacramento 047437

The State of California has appealed from decisions of the Manager which rejected its indemnity selection applications in all or some part because the lands lie within Nevada Grazing District No. 3 and are fully committed to grazing use, lie outside the state applicant's range allotment, disposal of the lands would unbalance livestock operations of existing range users, and because the lands contain water required for the unrestricted use and management of the remaining public lands in the area.*

Sacramento 047432 was rejected as to the NE¼NE¼ sec. 8, T. 9 N., R. 22 E. for the further reason that the lands had been conveyed to the United States and had not been opened to entry. The application Sacramento 047433 was rejected as to the S½NW¼ and the N½SW¼ sec. 5 and the SE¼NE¼ and the NE¼SE¼ sec. 6 T. 9 N., R. 22 E. for the same reason. Since the lands had not been opened to entry the State's applications could not be allowed as to these lands. Cf. Keith Specking et al., A-26190 (July 24, 1951)

* The E½W½ and the SW¼SW¼ sec. 17 (Sacramento 047434), the NW¼NE¼ sec. 8 T. 9 N., R. 22 E. (Sacramento 047432) were classified as proper for disposal as these subdivisions contain no resources required for public purposes or for management with the remaining public lands outside the area selected by the state. Moreover, the foregoing subdivisions lie within the state applicant's federal range allotment.

The lands are located in Nevada Grazing District No. 3 and within Slinkard Valley, California and comprises part of a large block of federal range lands which extends into Bagley Valley to the west and adjoins the Toiyabe National Forest, at certain points along its North and South boundaries.

Sacramento 047432, 047433

The lands are located in sections 5, 6 and 8, T. 9 N., R. 22 E., M.D.M., California. The lands contain springs which provide livestock water for adjoining public lands in Slinkard Valley and along the ridge between Slinkard and Bagley Valleys. The selected lands comprise the more level portions of the public land area within Slinkard Valley and are of "key" value for access to public lands to the North and West which lie at the higher elevations above the Valley floor. Moreover, the lands are valuable for wildlife propagation and are accessible and suitable for hunting of wild game. They are also used for camping purposes by the general public.

The state acquires no rights to public lands by virtue of an application as the lands are not subject to disposal until classified and open to entry. State of California et al., A-26816 (February 17, 1954). The decision as to whether the lands will be classified for disposal or not at all depends upon the public interest. Nelson A. Gerttula, 64 I.D. 225 (1957).

The Department has consistently held that an application for public land is properly rejected where the lands adjoin a large area of federally-owned lands and are needed to retain control of livestock watering places or are otherwise required for the proper management of the remaining public lands in the area. Cf. A. J. and Myrtle Barnes, A-27041, (May 26, 1955); or where the lands are required or needed for recreational purposes by the general public. Lafayette M. Hughes, A-27213 (December 28, 1955); Leroy E. Cassou et al., A-27600 (August 26, 1958).

Therefore, the decisions of the Manager were correct, and they are hereby affirmed.

Sacramento 047434, 047437

The circumstances concerning the $W\frac{1}{2}NW\frac{1}{4}$, $NW\frac{1}{4}SW\frac{1}{4}$, Sec. 17, T. 9 N., R. 22 E., are identical to those involved in applications Sacramento 047432, 047433 outlined above. Therefore, the decision of the Manager in Sacramento 047434 is affirmed as to the foregoing subdivisions in Sec. 17, T. 9 N., R. 22 E.

As to the remainder of the land embraced by state indemnity selection application Sacramento 047434 (the $S\frac{1}{2}$ Sec. 29, T. 9 N., R. 22 E.) and the land embraced by Sacramento 047437, the record indicates that it contains no water. Moreover, it adjoins deeded lands along its North, South, and East boundaries. Though the land adjoins other public lands to the West, the West boundary generally follows along the ridge between Slinkard and Bagley Valleys from which it extends Eastward toward Slinkard Creek forming a pocket in the deeded lands in that section of the Valley. Moreover, it is relatively isolated from the other public lands in the Valley. This land appears to have no value for public purposes or for management with the remaining public lands in the area.

As to the protest of Mrs. Bess Fulstone, George C. Koenig, Mabel Roberts and George Roberts; a grazing permit does not confer on the permittee any vested right in the land. State of Utah, A-25710 (January 30, 1950). The record indicates that George C. Koenig is the grazing permittee for the "Taylor Homestead Allotment" which includes the public lands in secs. 28, 29, 32, and 33 which the protestants indicate contains 207 AUMs of feed, 57% of which is federal range. The fact that the lands are in a grazing allotment is not in itself a bar to disposal. Cf. A. J. and Myrtle Barnes, supra. Nor have the protestants shown that cancellation of the grazing use would seriously interfere with the present grazing operations. Gladys M. Waters, A-27394 (December 20, 1956).

Therefore, the decisions of the Manager which rejected state selection application 047434 as to the $S\frac{1}{2}$ Sec. 29 and all of the lands embraced in Sacramento 047437 are hereby reversed and the protest of Bess M. Fulstone, George C. Koenig, Mabel Roberts, and George C. Roberts is hereby dismissed, insofar as it pertains to the $NW\frac{1}{4}NE\frac{1}{4}$, Sec. 8, $E\frac{1}{2}W\frac{1}{2}$, $SW\frac{1}{4}SW\frac{1}{4}$, Sec. 17, $S\frac{1}{2}$ Sec. 29, and the $W\frac{1}{2}SW\frac{1}{4}$ Sec. 28, $N\frac{1}{2}$, $W\frac{1}{2}SW\frac{1}{4}$, Sec. 32, $NW\frac{1}{4}$ Sec. 33.

The State Lands Commissioner, State of California, Mrs. Bess Fulstone; Mr. George C. Koenig; Mrs. Mabel Roberts and Mr. George Roberts are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is filed by the State Lands Commissioner, State of California, then the adverse parties to be served are Mrs. Bess Fulstone, Mr. George C. Koenig, Mrs. Mabel Roberts and Mr. George Roberts, In care of Paul D. Laxalt, Attorney at Law, Sweetland Building, Carson City, Nevada

If an appeal is filed by Mrs. Bess M. Fulstone, Mr. George C. Koenig, Mrs. Mabel Roberts, or Mr. George C. Roberts, the adverse party to be served is the State Land Commissioner, Division of State Lands, State of California, 1403 12th Street, Sacramento 14, California.

For the Director:
John B. Piccolo

Enclosure

DISTRIBUTION:
State Lands Commissioner (Certified Mail)
Mr. Paul D. Laxalt (Certified Mail)
Mrs. Bess M. Fulstone (Regular Mail)
Mr. George C. Koenig (Regular Mail)
Mrs. Mabel Roberts (Regular Mail)
Mr. George Roberts (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
Mr. William R. Earwaker
CFG

46567

STATE GRANTS AND SELECTIONS * 2 School Lands: Classification - Timber Land

TIMBER * 3 Factors in Classification

In determining whether land should be classified as suitable for State indemnity selection, the primary consideration is whether any Federal interest is to be served by retaining the land in Federal ownership.

Where the selected land is part of a larger block of Federal land which is included in the continuous yield management program of the timber resources, it is not in the public interest to allow the State's application.

State of California, Sacramento 049173 (December 18, 1958)

In reply refer to:

Sacramento 049173
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 18, 1958

Certified Mail
Return Receipt Requested

DECISION

State of California : State Indemnity Selection
:
:

Manager's Decision Affirmed

The State of California * has appealed from a decision of the Manager which rejected its indemnity school selection application because the land applied for is valuable for the production of timber and is part of a larger block of public domain which is under active sustained yield management of the timber resources.

The land selected by the State of California must be classified as subject to disposition as an indemnity selection before its application may be allowed. State of California, A-25971 (March 6, 1951). To be so classified there must not be any Federal interest which makes such a determination inadvisable. State of Nevada, A-26745 (May 20, 1953).

The land in issue is located in Trinity County, and is included in the sustained yield timber management program of the Redding Forestry District. Disposal of the selected land would seriously hamper proper management of the other public domain in the area. The record discloses that the lands support a stand of commercial timber containing an estimated volume of approximately 10,000 M board feet of timber.

Therefore, the allowance of the State's application would interfere with a public land program for the best utilization of an area of public land in which the selected land lies and would be contrary to the public interest in the conservation of timber resources. State of California, A-26816 (February 17, 1954). The State's application was properly rejected. State of California, Sacramento 048110 (October 29, 1958).

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* The appeal, concurred in by the State of California, was filed by Frank P. Donahue, presumably the prospective purchaser from the State of California. The prospective purchaser has no standing to appeal. State of California, A-25127 (December 14, 1948). See also State of Utah, A-25740 (August 31, 1949).

Furthermore, the Geological Survey has reported that of the lands selected by the State, Lot 11 and 12, sec. 30 T. 32 N., R. 8 W., M.D.M., are possibly valuable for gold. Lands mineral in character are not subject to selection under the school indemnity laws unless the base lands are also mineral and were lost to the State because of appropriation prior to survey. See act of August 27, 1958 (72 Stat. 928). Lot 11, sec. 30 is also embraced in Power Site Classification No. 29 of April 20, 1922, and is, therefore, not open to any form of disposition. Cf. Otis H. Snooks, Sr. et al., Colorado 08805 (June 26, 1957).

Accordingly, the decision of the Manager is affirmed.

The State of California is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

John B. Rieck

Enclosure

DISTRIBUTION:

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Lands Staff Officer
Appeals List No. 1
ALR

SMALL TRACTS * 2 Applications
* 3 Classification

STATE GRANTS AND SELECTIONS * 2 School Lands

DOCKET FILES

Where lands are classified as suitable for State indemnity selection, the rejection of small tract applications filed after the State application and the allowance of the State selection are proper.

Olaf H. Iverson et al., Sacramento 051057, etc. (December 29, 1960)

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Sacramento 051057
056068
056215
056216
5.04g

December 29, 1960

Certified Mail
Return Receipt Requested

DECISION

Olaf H. Iverson Sherman E. Tucker Joseph A. Jeans Frank D. Jeans	:	Small Tract Applications

Decision Affirmed

Messrs. Olaf H. Iverson, Sherman E. Tucker, Joseph A. Jeans, and Frank D. Jeans have appealed from a decision of the Manager dated December 3, 1959, rejecting their applications under the Small Tract Act, as amended, for certain small tracts of land. The decision allowed the State indemnity selection application of the State of California, Sacramento 047731, for certain lands in sec. 34, T. 32 N., R. 6 W., M.D.M., California, including those involved in the small tract applications.

The appellants all urge that the State selection application be rejected as to the lands involved in their small tract applications and that their applications be allowed. They claim that the State will not need or use these lands. Mr. Tucker and Mr. Iverson assert that the State should not be preferred merely because its application was filed prior to the other applications. They request that the lands be re-surveyed and also that the burden be placed upon the State to show that its need for the land is greater than that of the individual applicants.

The records indicate that the State selection application was filed on November 25, 1953, several years prior to the filing of appellants' applications. The application was amended on January 30, 1959, to delete certain lands covered by a reclamation withdrawal, which lands are not involved here. An examination of the lands in issue was conducted by Bureau personnel who found that the lands are suitable for State selection and classified them accordingly.

Concerning the proper classification of the lands, the burden was upon the appellants to show by positive and substantial evidence that the

classification adverse to them was erroneous. The mere statements of the appellants unsupported by any evidence are not sufficient. Mary Refugio Jackson et al., A-27236 (February 29, 1956).

There does not appear to be any reason for conducting a re-survey of the lands. Therefore, that request is denied.

Furthermore, as to the argument that the State application should not be preferred over the small tract applications, the Department has pointed out that the Secretary in exercising his discretionary authority to classify the lands, will consider the purpose of the public land laws and also the effect on the public interest. Nelson A. Gerttula, 64 I.D. 225 (1957). In the Gerttula case it was stated that applications "made by the States in exercise of their lieu selection rights should, as a matter of principle, be honored over competing private applications for the same lands, even though the latter may more nearly fit the characteristics of the lands." The case further points out that this principle applies even when the State application is filed subsequent to the conflicting private application. Therefore, that case is much stronger than the present situation where the state application was filed first.

In the circumstances, it appears that allowance of the State selection application and the rejection of the small tract applications were proper, and the decision is affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5.00 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $20.00. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken, the adverse party to be served is:

Division of State Lands
1403 - 12th Street
Sacramento, California

Charles P. Mead
Acting Director

Enclosure

DISTRIBUTION:

Glenn D. Newton, Attorney for Sherman E. Tucker and Olaf H. Iverson (Certified Mail)
Olaf H. Iverson (Certified Mail)
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Frank D. Jeans (Certified Mail)
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Lands Staff Officer
Appeals List No. 1
JB

DOCKET FILES

EPT. OF INTERIOR
ACRAMENTO, CAL.

AUG 8 10 00 AM 1963

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Sacramento 047731

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 5, 1963

DOCKET FILES

DECISION

State of California	:	Indemnity School Land
	:	Selection Application

Decision Affirmed

The above-named party has appealed from a decision dated October 31, 1962, rejecting its above-identified indemnity school land selection application for the reason it has been determined that the land is needed for retention in Federal ownership for use in connection with the Whiskeytown Recreation Area.1/

The appellant contends, in substance, that (1) the decision does not show that the land applied for has been withdrawn or otherwise reserved for recreational or other purposes in connection with the proposed Whiskeytown Recreation Area, and all that has occurred is that a proposal for such recreation area has been made, (2) the date of the proposal to include the land embraced in the subject indemnity selection in the recreation area is not stated in the decision appealed from, and such date appears to be subsequent to the decisions of December 3, 1959, December 29, 1960, and July 12, 1962 /of the Manager of the Land Office, the Director, and the Secretary of the Interior, respectively/, allowing the State's selection over conflicting small tract applications involving the same land, (3) the "appropriate action" taken by the Manager's decision of December 3, 1959, is not set forth in the decision hereby appealed from, and, actually, such "appropriate action" was to classify the land applied for under section 7 of the Taylor Grazing Act of June 28, 1934, as amended (48 Stat. 1269; 43 U.S.C. 315f), as proper and available for indemnity selection under the act of February 28, 1891 (26 Stat. 796; 43 U.S.C. 851). The appellant concludes that the decision appealed from is an abuse of any discretion granted under section 7 of the Taylor Grazing Act and denies its indemnity selection rights in the selected land.

The appellant requests that a hearing be held in the matter for the purpose of presenting evidence on the issues of fact, as provided for by 43 CFR 221.6. The appellant also requests that a time and place be fixed in order that it may present oral argument, as provided for by 43 CFR 221.8.

1/ Subsequent to the filing of its appeal, the State of California has amended its application by eliminating a portion of the base lands described in its original application, and substituting other base lands therefor. However, the amendment does not affect the selected land described in the application. Therefore, the decision appealed from remains in effect.

The records show that the land involved is located one mile below the Whiskeytown Dam and Reservoir on Clear Creek, and it has been determined that the land is highly valuable for recreational use. Bills have been introduced in both houses of the 88th Congress (S. 734 and HR 3618) to set aside the area in which the subject land is located for the Whiskeytown-Shasta-Trinity National Recreation Area. The land is, therefore, needed for retention in Federal ownership for use in connection with this proposed National Recreation Area.

While it is true that no formal withdrawal or reservation has been made in connection with the Whiskeytown-Shasta-Trinity National Recreation Area, the land is among those public lands withdrawn by Executive Orders 6910 and 6964 of November 26, 1934 and February 5, 1935, respectively, and reserved for classification by the Secretary of the Interior, or his authorized delegate, pursuant to section 7 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269), as amended. It is well established that the mere filing of a school indemnity selection application does not vest in the State an interest in the selected lands which would deprive the Secretary of his authority to revoke a previous classification upon reconsideration and, further, refuse to classify and open the lands for State selection where the public interest would not be served. The authority conferred upon the Secretary by section 7 of the Taylor Grazing Act to classify and open public lands for disposition imposes upon him the responsibility of determining whether the public interest would best be served by classifying lands as suitable for disposition pursuant to a State school indemnity selection. State of California, 67 I.D. 85 (1960).

Conversely, we believe that the authority granted to the Secretary under section 7 of the Taylor Grazing Act would impose upon him the responsibility of determining that public lands should not be disposed of where the public interest would best be served by retaining them in Federal ownership, even though, as in the instant case, the lands have been previously classified as suitable for State selection and opened to application, and the State's selection application allowed over conflicting small tract applications by a Land Office decision. The only issue here is the effect of the revocation of the order classifying and opening the lands to State indemnity school land selection and the subsequent refusal to classify and open the lands for such purposes after the allowance of a State indemnity school land selection application. The notice to the State of the allowance of its selection application is merely an administrative expedient used by the Bureau to inform the State that its application has been considered and found to be acceptable and was preferred over competing private applications for the same lands. Such allowance, however, is subject to the State's further compliance with the regulation (43 CFR 270.4), requiring publication of the notice of the selection in a designated newspaper. The State does not earn equitable title in the selected land until it has completed publication of the notice, paid the required charges, and submitted proof of such publication, and notice of the selection has been properly posted

in the Land Office. Cf. State of Wyoming v. United States, 255 U.S. 489 (1921). See also United States v. State of New Mexico, 52 L.D. 741 (1929) and 54 I.D. 175 (1933). The State in the instant case has not as yet published notice of the selection.

Furthermore, the Department's approval and certification of the lieu lands selected by a state are necessary prerequisites to the vesting of title to such lands in the state, there being, in fact, no selection until final approval is executed by the Department. Cf. State of New Mexico, (On Petition), 46 L.D. 217 (1917). Until acceptance has been given and equitable title passed, Congress has full authority to devote the land to a public purpose. See Administrative Ruling, 43 L.D. 293 (1914).

The records show that the land in question is embraced in a proposed reclamation withdrawal, Sacramento 072929, notice of which was published in the Federal Register of November 30, 1962. The appellant has filed a timely protest against this proposed withdrawal. However, the rejection of the State's selection application for the reason that the land is needed for the Whiskeytown-Shasta-Trinity National Recreation Area would render moot its objection to the proposed reclamation withdrawal.

With respect to the appellant's request for a hearing in order that evidence may be presented on the issues of fact in the case, we do not believe that a hearing would develop facts decisive of the issues involved that are not already of record. Nor do we believe that anything would be gained by fixing a time and place for the presentation of oral argument as requested by the appellant. Therefore, the requests for a hearing and the right to present oral argument are hereby denied. Cf. Margaret A. Andrews et al., 64 I.D. 9 (1957).

Accordingly, the decision appealed from is affirmed.

This decision constitutes a final administrative determination by the Department in this matter. 43 CFR 221.31.

Charles H. Stoddard

Director

Approved: July 31, 1963

John A. Carver, Jr.

tant Secretary of the Interior

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appeal to Sec
set aside & Remanded
A-30387
1-18-66

DOCKET FILES

Swamplands 2222.5

The State has the burden of proving that the applied-for lands were swamp or overflowed at the time of the grant to the State. Where the survey notes do not establish the swamp character of the lands sought, an application based upon ecological inferences and deductions from the conditions of other land in the area is properly rejected.

State of California, Los Angeles 0164001 (September 30, 1964)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1964 OCT 12 AM 10 00

In reply refer to:
704
Los Angeles 0164001

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

September 30, 1964

Certified Mail
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DECISION

State of California : Swamp and Overflowed Land

Decision Affirmed

The State of California has appealed from a decision of the Field Services Land Office, dated April 22, 1964, rejecting its application for approximately 1722 acres of public lands located in T. 10 N., R. 22 E., S.B.M., California. The application was rejected for the principal reason that the State failed to show that the lands sought are swamp and overflowed in character.

The appellant alleges, substantially, as follows:

1. "The area designated as 'Lake Tapio' is bounded in part on the east by an undivided, unclassified area designated as 'Low Land-Covered with dense tules.' The north lines of the area indicated as 'Lake Tapio and 'Low Land are coincident with the south line of the swamp lands shown on the 1924 plats of T. 11 N., R's. 21 and 22 E. These descriptive designations coupled with the classification of swamp and overflowed lands in Sections 34 and 35 as segregated in 1883 (i.e. Tracts 45 and 46) constitutes a return of a continuous body of swamp and overflowed lands . . . Certainly any area covered with dense tules is obviously subject to overflow and is swampy in character. . . . ."

2. "/T/he fact that Lake Tapio is 'not permanent' indicates that it is a temporarily overflowed area and, accordingly, should have been classified as swamp and overflowed lands . . . ."

3. "/T/he entire area is subject to such inundation as to be considered as unfit for agricultural use and is therefore classifiable as swamp and overflowed lands . . . ."

The Land Office decision states that the survey plat of December 18, 1884 fails to indicate the lands as swamp in character. The plat approved on February 11, 1924 shows that the lands lie within Lake Tapio. This lake was not considered permanent and it was not meandered. The plat of January 23, 1931 indicates that the applied-for lands lie in or adjacent to Lake Tapio. None of these findings of fact are disputed by the State.

In addition an 1899 U. S. Coast and Geodetic Survey map of the "Oblique boundary line between California and Nevada" shows the area in question as sandy, covered with brush and occupied by Indians. Bureau records also contain early maps made in 1851 and 1852-58 showing that the lands were either east of the Colorado River channel or flowing through the subject lands. The 1851 map is of no help to the appellant and is not relevant to the issue on appeal. If the 1852-58 map was accurate there would be no basis for the claim because lands covered by an apparently permanent body of water at the time of the swamp grant are not of the character contemplated by the Act, even though subsequently, by a recession of the waters land of a swamp, character should come into existence. State of Florida (on rehearing) 47 L.D. 93 (1919).

A report of field examination states that the subject land is covered by a dense stand of Tamarisk trees which can be cleared and placed in agricultural production; the soil is of light to medium texture; and bordering private land on the north is planted to sudan and irrigated pasture.

The Department has consistently held that theoretical ecological inferences from observed present conditions or deductions from conditions shown along a surveyed line or inferences from the character of the timber growing on the land are not deemed sufficient to establish the character of the land as swamp and overflowed. State of Mississippi v. United States et al., 48 L.D. 421, 426 (1921); Boyles v. State of Wisconsin, 33 L.D. 56 (1904); State of Michigan v. Erickson 5 L.D. 681, 683 (1887).

The presence of a temporary lake upon the land in 1924 in no way establishes the swampy character of the land in 1850.

The Department has also ruled that after the lapse of more than thirty years a claim under a Congressional grant must be construed strictly against the grantee and the burden of proof is on the claimant. DeWitt v. State of Oregon et al., 21 L.D. 256, 263 (1895). In this case there is a lapse of more than a century. Also, the fact that the notes relied upon by the State refer to other subdivisions in the same area as low or swampy "proves nothing as to the land in question, except to suggest that, because nothing is stated as to the nature of the land, it is probably dry land." State of Louisiana, A-29124 (January 14, 1963).

Consequently, under the facts in this case, no inferences can be drawn favorable to the State that the land was swampy within the purview of the 1850 Act.

Accordingly, the decision is affirmed.

The State of California is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington,

D. C. 20240. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

James F. Doyle
Chief, Office of Appeals
and Hearings

Enclosures

DISTRIBUTION

California State Lands Commission (Certified Mail)
Div. of L&M S&T (4)
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Appeals List No. 1
MHS

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misc

Sacramento 063368
079131

JULIAN LINDSAY, STATE OF CALIFORNIA

Approved August 4, 1966

Public Sales: School Lands--Indemnity Selections: Classifications--Protest

A protest made by a public sale applicant against the classification of the applied for land for indemnity school-land selection will be dismissed, even though the public sale application was filed first, where it is determined that the land is more suitable for indemnity selection, pursuant to a petition-application subsequently filed by the State of California, because disposal of the land to the State would assure the achievement of the maximum uses of the land consistent with State and Federal programs for land management.

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 AUG 12 AM 10 00

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079184

JULIAN LIBRARY, STATE OF CALIFORNIA

Approved August 5, 1964

In reply refer to:
724
Sacramento 063368
079131

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

July 27, 1966

DECISION

Julian Lindsay	:	Public Sale Application
State of California	:	Indemnity School-land Selection Petition-Application

:

Public Sale Application Rejected
Indemnity School-land Selection Petition-Application Approved

On June 20, 1960, Julian Lindsay filed an application, Sacramento 063368, pursuant to Rev. Stat. § 2455 (1875), as amended, 43 U.S.C. § 1171 (1964), to purchase a tract of public land described as Lot 3, sec. 6, T. 11 N., R. 7 W., M.D.M., California, containing 33.11 acres.

On November 12, 1964, the State of California through the Lands Division, filed a petition-application to select the same land, pursuant to Rev. Stat. § 2275 and 2276 (1891), as amended, 43 U.S.C. §§ 851, 852 (1964), in lieu of the same amount of school grant land lost to the State.

On January 7, 1965, the Bureau's State Director for California issued a decision proposing to classify the land for State selection, and denying the application for public sale. Mr. Lindsay protested this decision on February 8, 1965.

In his protest, Mr. Lindsay contends, in substance, that (1) the State's filing was given preferential treatment in view of the fact that his application was filed over three years before the State filed its petition-application, (2) there is no stream on the land, (3) the land is not valuable for timber, and (4) the land should be put to private use for watershed protection and to increase county taxes. The protestant further asserts that the State has not developed the 3,400 acres of forest lands in the Boggs Mountain State Forest (to which the subject land is contiguous), and has no plans to do so.

Record information shows that the land in question is isolated in relation to other Federal lands, but it extends into the State Forest as a peninsula, and contains a small amount of Ponderosa pine and Douglas fir trees. Field examination also disclosed that Spikenard Creek, an annual stream, does in fact traverse the southwest corner of the tract. State ownership of the land would block up the Boggs Mountain lands owned by the State, and would thereby preclude boundary and certain other administrative problems. In addition, the general area is valuable for public recreation since it contains several popular resort centers, mineral springs, and well established lodges, and because the State Forest itself, contains large hunting grounds. The proposed

transfer of the land to the State would, therefore, increase the recreational opportunities for the general public in this area.

It is recognized that the public sale application was filed by Mr. Lindsay several years prior to the petition-application filed by the State of California. However, it can only be concluded that while the land in question might be suitable for sale under the public sale law, in view of the above-cited facts the public interest would demand that the land be retained in some form of public ownership in order that its maximum uses may be realized consistent with the State and Federal land management programs. In this respect, under the criteria for classifying public lands for their use or disposal as specified in the applicable regulation, 43 CFR 2410.1-1(a)(2), all present and potential uses and users of the lands must be taken into consideration.

Moreover, it has been well established by the Department as well as the Courts, that the authority granted to the Secretary of the Interior, or his delegate, to examine and classify public land for disposal under section 7 of the Taylor Grazing Act of June 28, 1934, as amended, 48 Stat. 1269, 1272, 43 U.S.C. §§ 315a, 315f (1964), is discretionary in scope. In exercising the discretionary authority vested in him by section 7 of the Act, the Secretary may properly consider and weigh all factors which have a bearing on the suitability of the land for use or disposal, including the effect on the public interest. The fact that the land may be suitable for disposition under the first application filed therefor, does not require that the land be classified for such disposition if the land is more suitable for other disposition, and it is more in the public interest to so dispose of the land. See Nelson A. Gerttula, 64 I.D. 225 (1957). Sustained by the Courts in Nelson A. Gerttula v. Stewart L. Udall, 309 F. 2d 653 (1962).

The protestant, Mr. Lindsay, has not presented any positive or substantial evidence showing that the classification of the land in question for disposal to the State of California under its indemnity school-land selection petition-application is in error.

Accordingly, the public sale application filed by Julian Lindsay is rejected, and the indemnity school-land selection petition-application filed by the State of California is approved.

This decision constitutes a final administrative determination by the Department under 43 CFR 1844.1 as to the public sale application filed by Julian Lindsay, and under 43 CFR 2411.1-1(e)(4), as to the indemnity school-land selection petition-application filed by the State of California.

John O. Crow

Acting Director

Approved: August 4, 1966

Assistant Secretary of the Interior

DISTRIBUTION
Mr. Julian Lindsay
State of California Lands Commission, State Lands Division, Department of Finance
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Staff Assistant to Assistant Secretary, PLM
Assistant Solicitor, Land Appeals
Docket & Records Section, SOL (2)
Appeals List No. 1
FC

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In reply refer to:
704
Sacramento 069094

January 25, 1968

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DECISION

Ralph J. Rustenbach and Hilda M. Rustenbach	:	State Grant Mining Claims

Decision Affirmed

The above-named appellants have appealed from the decision of the land office at Sacramento, dated August 25, 1967, dismissing their protest against an application of the State of California for patent to confirm the State's asserted title to sec. 16, T. 45 N., R. 7 W., M.D.M., California, pursuant to the act of June 21, 1934 (43 U.S.C. § 871a (1964)). The decision held that the allegations contained in the appellants' protest, if true, are not facts which would warrant the rejection of the State's application.

The appellants alleged in the protest that the section is known to be mineral in character. The decision appealed from points out that the land is within one of the numbered sections in place included in the grant to the State for the support or in aid of common or public schools if the land were nonmineral in character at, or prior to, the date of acceptance of the official plat of survey on January 6, 1886 (10 Stat. 244). The decision also properly points out that where such sections could not pass to the State under the original school grant because of the mineral character of the land, they were granted to the State by the act of January 25, 1927, as amended (43 U.S.C. § 870 (1964)), in the absence of certain circumstances enumerated in the latter act which are not alleged in the appellant's protest to be present. Thus, if the land were mineral in character, such fact by itself would not have precluded title to the land from vesting in the State in 1927. The act of January 25, 1927, supra, as it relates to numbered sections in place in California is explained by the Department in Margaret Scharf et al., 57 I.D. 348 (1941). Briefly, the protest alleges no fact which would require a determination as to the mineral character of the land. See Dorothy P. Soeth, 60 I.D. 1 (1947).

The Rustenbachs assert in their protest that they are the owners of the Sunnyside Quartz Claim which was located on February 15, 1932, the Pay Role Quartz Claim which was located on June 14, 1940, and the Candlemas Quartz Claim which was located on January 3, 1955. Each of the three mining claims is located within sec. 16. Since each of the mining claims named in the protest was located after the enactment of the act of January 25, 1927, supra, such locations would not preclude title to the land from having vested in the State in 1927.

The mining location laws of the United States relate only to lands owned by the United States; therefore, a location under such laws upon lands owned by the State of California would be a nullity. See 30 U.S.C. § 22 (1964). If the appellants now own a valid mining claim which was located prior to the act of January 25, 1927, supra, the location would preclude title to such land from having vested in the State by reason of that act. See the Scharf decision at page 359. However, as stated previously, it is equally apparent that the facts stated in the appellants' protest (that the land is mineral in character and that the protestants are the owners of mining claims located subsequently to the act of 1927, supra), are not facts which would preclude the title to the land from passing to the State in 1927, even if title did not pass by reason of the original grant.

On appeal the appellants assert that there were mining claims within sec. 16 prior to the enactment of the original grant to the State. As to the land in issue, the appellants assert that their Pay Role Quartz Claim embraces the same land formerly located as the Lucky Strike No. 2 claim, and that the latter location was one of the oldest recorded mining claims in the County. The appellants do not assert that they are owners within the chain of title to the Lucky Strike No. 2 location, and the existence of their purported location shows that they do not contend that the earlier location is valid. The records of the Siskiyou County Recorder's office show that the Pay Role Quartz Claim was located on June 14, 1960, by one W. C. Snyder, and that Mr. Snyder conveyed to the appellants his title to the three purported locations named in the protest by deed dated October 28, 1959. Without further information, the mere assertion that a portion of the land in issue was embraced during an unknown period within an old, terminated mining location, is not a showing by itself that would support a determination that title to the land did not vest in the State by reason of the act of 1927, supra, if not earlier. Cf. Richard R. Fancher et al., A-30840 (November 13, 1967).

For the reasons stated, the land office decision dismissing the protest is affirmed.

The land office shall suspend processing of the State's application for patent for a period of 30 days from the date this decision becomes final in order that the appellants, if they so assert, may have an opportunity to submit to the land office a showing (such as an abstract of title) that they are the owners, through an unbroken chain of title from the locator, to a mining claim on the land in issue which was located prior to the time that title to the section would otherwise have vested in the State. See Neil Ferre, A-30882 (November 29, 1967). After submitting such a showing, the appellants may, during this 30-day period, initiate a private contest (see 43 CFR 1852.1) against the State's application in the event they allege, and are willing to assume the burden of proof, that the land was known to be mineral in character prior to January 6, 1886, that their mining claim was validated by a discovery prior to the time that title to the land would otherwise have vested in the State, and that the claim has been continuously valid thereafter. Cf. John D. Archer et al., 67 I.D. 181, 186-187 (1960).

Mr. Ralph J. and Mrs. Hilda M. Rustenbach are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $5.1/ In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellants will have the burden of showing, by positive and substantial evidence, wherein the decision appealed from is in error.

If an appeal is taken by the appellants, the adverse party who must be served is:

State of California
Department of Finance
State Lands Commission
State Lands Division
302 State Building
Los Angeles, California 90012

Frances A. Patton

Chief, Branch of Mineral Appeals
Office of Appeals and Hearings

Enclosures 2

1/ Although, as explained previously, mining claims located under the mining laws on State-owned land are a nullity, the Bureau has not as yet determined whether title to the land has vested in the State or whether the land is public land open to appropriation under the mining laws. Consequently, this decision is not to be construed as holding that the mining claims named in the appellants' protest are invalid. The decision merely determines that the allegations in the protest and statement of reasons are not reasons for rejecting the State's application for patent. Therefore, the filing fee for an appeal is computed on the basis of the protest which is adversely affected by this decision.

DISTRIBUTION
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Mr. Mark M. Brawman, Attorney for Protestants
State Lands Division, State of California
Div L&M S&T (4)
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Gower Federal Services
Appeals List No. 1
JHO'D

misc

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1968 FEB 5 PM 10 00

School Lands: Mineral Lands 2222.3

School lands which because of their mineral character could not pass under the original school grant, nevertheless passed to the State by virtue of the act of January 25, 1927, as amended, provided certain circumstances enumerated in that act were not present. The Department need not, therefore, determine the mineral character of the land unless the existence is shown of those circumstances.

Mining Claims: Lands Subject to 3400.1

The mining location laws of the United States only relate to lands owned by the United States; therefore, if title to land has vested in a State pursuant to a school land grant prior to the location of a mining claim, a purported mining location on such land is a nullity.

Ralph J. and Hilda M. Rustenbach, Sacramento 069094 (January 25, 1968)

appeal to be. A-31257

muse

School Lands: Indemnity Selections 2222.1

Absent a final adjudication of the State's right to indemnity and to any portions of sec. 16 not used as base for approved lieu selections, publication of notice of a proposed patent to the State and the protests elicited thereby are premature. The decisions allowing such publication and dismissing the protests must be vacated and the case remanded for final adjudication of the State's right to place lands in sec. 16 and for validly designated base for the approved lieu selections.

American Smelting and Refining Company; Robert C. Buch, et al., v. State of California, Riverside 1994 **(January 6, 1970)**

1970 JAN 26 AM 10 00
INTERIOR
MANAGEMENT
LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

In reply refer to:
141
Riverside 1994

January 6, 1970

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DECISION

State of California,
Applicant :

American Smelting and
Refining Company :

Robert C. Buch, et al.,
Protestants :

State Patent Application

Decisions Vacated - Cases Remanded

Robert C. Buch and others have protested the issuance of a patent to the State of California for lands in sec. 16, T. 10 N., R. 1 E., San Bernardino meridian, on the ground that their mining locations, in partial conflict with the State's application, preceded the survey of the section and thereby precluded the vesting of title in the State as to the lands in conflict. By decision of June 11, 1969, the Riverside District and Land Office dismissed the protests, stating that title was presumed to have vested in the State prior to the effective dates of the location of the mining claims. The dismissal was without prejudice to their initiating private contest proceedings to have the State's title and interest invalidated.

The American Smelting and Refining Company (successor in interest to John S. Chapman, Executor of the Last Will and Testament of Rose L. Burcham, and other residuary legatees), as owner of ten mining claims in partial conflict with the State's patent application, has also protested the issuance of patent to the State for lands in the same section. By separate decision of June 11, 1969, the Riverside office refused further consideration of this protest with respect to five of the mining claims because they were included in private contest proceedings which would determine the priority of rights to the land between the mining claimants and the State, and the rights of the protestant to a patent for the lands at issue would be determined in the adjudication of the contest. The Riverside office decision also allowed a period of thirty days after it became final within which the protestant was required to initiate private contest proceedings to have the State's title or interest invalidated as to the land in the remaining five claims.

The protestants under both decisions have filed appeals from these dismissals, attempting to show that their rights have in some manner been abrogated, and that their mining claim locations antedate the time when the State's title would otherwise have vested in the lands involved.

Under five selection lists approved between 1895 and 1898, the State took indemnity for 513.59 acres of then unsurveyed sec. 16, T. 10 N., R. 1 E., S.B.M., listing the cause of loss of parts of sec. 16 as "mineral." Between 1888 and 1892 mineral patents were issued for mining claims covering 110.22 acres of these 513.59 acres. The first plat of survey of this township was approved on November 12, 1914, the earliest date when the State's title could have vested as to school lands in place.

There is considerable correspondence between the General Land Office (now Bureau of Land Management) and the California State officials concerning these indemnities taken, and which portions of sec. 16 were properly used as base therefor. This correspondence is identified as Misc. File No. 1383216 (1910 Series). It clearly shows that after the survey of this township no final adjudication was ever made with respect to the State's right to those subdivisions of sec. 16 not designated as base for the approved selections. The only portions of sec. 16 designated as base for these indemnity selections, and so accepted by the General Land Office, are lots 1, 2, 3, 4, 8, and 12, together with the area of 110.22 acres included in the patented mining claims in sec. 16, aggregating a total of 235.60 acres. Additional base of 44.60 acres was required to be designated by the State on the basis of the loss in sec. 16, to cover a total required designated base of 280.20 acres, indicating that more indemnity was granted than was supported by designated base lands in sec. 16, or by other valid base. The remainder of 233.39 acres, out of the original 513.59 acres of indemnity land claimed, is covered by other transactions. 1/

Absent a final adjudication of the State's right to indemnity and to any portions of sec. 16 not used as base for the approved lieu selections, the publication of notice of the State's present patent application and the dismissal of the protests elicited thereby were premature. In these circumstances, the decisions of June 11, 1969, of the Riverside office are vacated, the protests by Robert C. Buch, and others, and by American Smelting and Refining Company, are dismissed, and the case is remanded to the Riverside office, through the State Director, to require the State to designate valid base for the approved selections, and to make a final adjudication of the State's right to sec. 16 lands in place. Incident to this adjudication it will be necessary for that office to make a finding with respect to the mineral character of the land on the date of survey and also to make the initial determination as to the validity of the mining claims.

1/ See letter of June 13, 1932, No. 1383216 "F" RCP, and other correspondence in the same file.

If it is determined, upon adjudication of the State's lieu selections, that the State is entitled to any subdivisions of sec. 16 in place, a new publication of notice thereof will be made. Publication of the notice will be the appropriate time for the protestants herein to initiate private contest proceedings under 43 CFR Subpart 1852, if the published notice shows lands in conflict with their claimed mining locations.

Edward W. Stuebing

Acting Chief, Office of Appeals
and Hearings

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State Lands Division (Certified Mail)
Mr. Phillip Samovar, State Deputy Attorney General (Certified Mail)
300
200
Appeals List No. 1